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STATE GOVERNMENT SERIES

HISTORY AND GOVERNMENT SOUTH DAKOTA



BY
G. M. SMITH
AND
C. M. YOUNG

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THE
STATE GOVERNMENT SERIES

EDITED BY

B. A. HINSDALE, Ph.D., LL.D.

VOLUME V.



THE FIRST SCHOOL HOUSE IN DAKOTA.—AMOS F. SHAW, THE FIRST TEACHER.
See Appendix, page 33*2a*.

HISTORY
AND
Civil Government of South Dakota

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AND

THE GOVERNMENT OF THE UNITED STATES

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OF MICHIGAN

REVISED EDITION



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THE STATE GOVERNMENT SERIES

UNDER THE GENERAL EDITORSHIP OF

B. A. HINSDALE, Ph.D., LL.D.

Professor of the Science and the Art of Teaching in the University of Michigan;
Author of "The American Government," "Studies in Education," etc.

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PREFACE TO THE REVISED EDITION

The publication of a new edition gives the authors the opportunity to revise the book and make necessary changes. Successive legislatures have made changes in the constitution and the laws of the State which necessitated some modification of the text. Some minor additional changes have been made. The book has been brought up to date, and gives, we believe, a faithful presentation of the institutions of the State and Nation.

It should be observed that the book consists of four parts more or less distinct, and any of these may be omitted at the discretion of the teacher. Where the time spent on civics is brief, the historical matter may be left out. Or both parts may be pursued at the same time in different classes, the historical matter being studied more as history proper. The value of Part II, the Origin and Development of our Civil Institutions, should not be underestimated. Pupils can hardly be made to appreciate the genius of our government until they have done something toward tracing the development of political institutions from their beginnings. Only as they learn how our civil and political institutions, originating in the needs of human society, have taken form and being by the slow processes of growth, and been changed and modified to meet changing conditions, can they clearly understand the nature of government and the tendencies inherent in our institutions.

It is with sadness and a deep sense of loss that we record the death of the editor of the State Government Series of which this book is a part, and author of Part IV of this text. On Thanksgiving Day, 1900, Dr. Hinsdale was called from the scene of his labors and triumphs. A typical American, he rose to high position by his own efforts and ability, and for many years before his death was ranked

as one of the few really great men in the educational work of this country. His friendship and counsel were enjoyed and appreciated by a wide circle of friends. His writings made him an important figure in both historical and educational fields. Of judicial and conservative temper, his influence has done much to hold educational theory within safe lines. A most thorough and painstaking student of history and politics, his writings in these fields contribute large values to human thought. He went to his reward full of years and honors, most sincerely mourned by the large circle of his students, respected and beloved by all who knew him, having achieved an enviable place in the world of thought and letters.

The thanks of the editors are again due to all who by suggestion or criticism have aided in improving the book. The kindly reception which the book received in its first edition leads us to hope that in its new form it will be still more helpful to the teachers of the State.

UNIVERSITY OF SOUTH DAKOTA,

VERMILLION, OCTOBER 1, 1901.

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BIBLIOGRAPHY.

CIVICS.

While it has been thought best not to attempt anything like a complete bibliography of the subject of Civics in the historical and institutional phases of local government, the following references will be found helpful to those pursuing the subject further than can be done in a brief treatise. These books may be obtained of any bookseller.

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- The Old Northwest, B. A. Hinsdale, N. Y., 1888.
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- Rise of the Republic of the United States, Richard Frothingham, Boston, 1890.
- Constitutional History of the United States, 2 Vols., Geo. Bancroft, N. Y., 1893.
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- Compiled Laws of Dakota, 1887, and the Territorial Session Laws of 1889.
- Laws of South Dakota, 1890, '91, '93, '95, and '97.
- Organic Act for Dakota passed March 2, 1861, United States Statutes at Large.
- Enabling Act for Admission of South Dakota, passed Feb. 22, 1889, United States Statutes at Large.
- Constitution of South Dakota, usually printed with the Session Laws of the State, but published separate by H. L. Bras, Mitchell, S. D.

TERRITORIAL AND STATE HISTORY.

References for the Territorial and State history are few. The main recourse is to records and official documents. The following are, perhaps, most accessible:

- History of the Lewis and Clark Expedition, 4 Vols., N. Y., 1893.
- Historical Atlas of Dakota, A. T. Andreas, Chicago, 1884. (The most reliable Territorial history.)
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- Publications of the Territorial Department of Immigration and Statistics for the years 1887 and 1889.
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- History of South Dakota from Earliest Times, Doane Robinson. The Educator School Supply Company, Mitchell, 1900.
- The Black Hills, or the Lost Hunting Ground of the Dakotahs, Annie D. Tallent, Nixon-Jones Printing Company, St. Louis, 1899.
- Early Empire Builders of the Great West, Moses K. Armstrong, E. W. Porter, St. Paul, Minn., 1901.

GENERAL INTRODUCTION.

The character of the volumes that will comprise The State Government Series is indicated by the name of the series itself. More definitely, they will combine two important subjects of education, History and Government. It is proposed in this Introduction briefly to set forth the educational character and value of these subjects, and to offer some hints as to the way in which they should be studied and taught, particularly as limited by the character of the Series.

1. THE EDUCATIONAL VALUE OF THE STUDY OF HISTORY AND GOVERNMENT.

Not much reflection is required to show that both of these subjects have large practical or guidance value, and that they also rank high as disciplinary studies.

1. *History*.—When it is said that men need the experience of past ages to widen the field of their personal observation, to correct their narrow views and mistaken opinions, to furnish them high ideals, and to give them inspiration or motive force; and that history is the main channel through which this valuable experience is transmitted to them—this should be sufficient to show that history is a very important subject of education. On this point the most competent men of both ancient and modern times have delivered the most convincing testimony. Cicero called history “the witness of times, the light of truth, and the mistress of life.” Dionysius of Halicarnassus said “history is philosophy teaching by

examples," and Lord Bolingbroke lent his sanction to the saying. Milton thought children should be taught "the beginning, the end, and the reasons of political societies." Another writer affirms that "history furnishes the best training in patriotism, and enlarges the sympathies and interests." Macaulay said: "The real use of traveling to distant countries, and of studying the annals of past times, is to preserve them from the contraction of mind which those can hardly escape whose whole commerce is with one generation and one neighborhood."

In every great field of human activity the lessons of history are invaluable—in politics, religion, education, moral reform, war, scientific investigation, invention, and practical business affairs. The relations of history and politics are peculiarly close. There could be no science of politics without history, and practical politics could hardly be carried on. But, more than this, there can be no better safeguard than the lessons of history against the specious but dangerous ideas and schemes in relation to social subjects that float in the atmosphere of all progressive countries. In fact, there is no other safeguard that is so good as these lessons; they are experience teaching by examples. The man who has studied the history of the Mississippi Scheme, the South Sea Bubble, or some of the less celebrated industrial or economical manias that have afflicted our own country, is little likely to embark in similar schemes himself, or to promote them. The man who has studied the evils that irredeemable paper money caused in France in the days of the Revolution, or the evils that the Continental money caused in our own country, will be more apt to form sound views on the subjects of currency and banking than the man who has had no such training. The

school of history is a conservative school, and its lessons are our great defense against cranks, faddists, and demagogues.

2. *Government.*—Politics is both a science and an art. It is the science and the art of government. As a science it investigates the facts and principles of government; as an art it deals with the practical applications of these facts and principles to the government of the state.

Now it is manifest that the art of politics, or practical government, directly concerns everybody. Few indeed are the subjects in which men, and particularly men living in great and progressive societies, are so deeply interested as in good government. The government of the state is charged with maintaining public order, securing justice between man and man, and the promotion of the great positive ends of society. For these purposes it collects and expends great revenues, which are ultimately paid from the proceeds of the labor of the people. Furthermore, in republican states, such as the American Union and the forty-five individual States that make up the Union, government is carried on by the people through their representatives chosen at popular elections. The voters of the United States are a great and rapidly growing body. In the presidential election of 1888, 11,388,007 citizens participated; in the presidential election of 1896, 14,071,097—a growth of more than 2,680,000 in eight years. Moreover, these voters are felt in many other ways and places; they vote for National representatives, for State legislatures, executives, and judges, for county, township, and city offices, for the supervisors of the roads and the directors of the public schools. There is not a point in the whole round of National, State, and Local government that the popular will, as expressed at elections,

does not touch. Every man is, therefore, directly concerned to understand the nature and operations of these governments, and almost equally concerned to have his neighbors also understand them.

We have been dealing with practical politics exclusively. But the art of government depends upon the science of government. The government of a great country like our own, at least if a good one, is a complicated and delicate machine. Such a government is one of the greatest triumphs of the human mind. It is the result of a long process of political experience, and in its elements at least it runs far back into past history. It is, therefore, a most interesting study considered in itself. All this is peculiarly true of our own government, as will be explained hereafter.

However, this complicated and delicate machine is not an end, but only a means or instrument; as a means or instrument it is ordained, as the Declaration of Independence says, to secure to those living under it their rights—such as life, liberty, and the pursuit of happiness; and the extent to which it secures these rights is at once the measure of its character, whether good or bad.

It is also to be observed that a government which is good for one people is not of necessity good for another people. We Americans would not tolerate a government like that of Russia, while Russians could hardly carry on our government a single year. A good government must first recognize the general facts of human nature, then the special character, needs, habits, and traditions of the people for whom it exists. It roots in the national life and history. It grows out of the national culture. Since government is based on the facts of human nature and human society, it is not a mere crea-

ture of accident, chance, or management. In other words, there is such a thing as the science of government or politics. Moreover, to effect and to maintain a good working adjustment between government and a progressive society, is at once an important and difficult matter. This is the work of the practical statesman. And thus we are brought back again to the fact that the science of government is one of the most useful of studies.

Mention has been made of rights, and of the duty of government to maintain them. But rights always imply duties. For example: A may have a right to money that is now in B's possession, but A cannot enjoy this right unless B performs the duty of paying the money over to him. If no duties are performed, no rights will be enjoyed. Again, the possession of rights imposes duties upon him who possesses them. For example: The individual owes duties to the society or the government that protects him in the enjoyment of his rights. Rights and duties cannot be separated. Either imply the other. Accordingly, the practical study of government should include, not only rights, but also duties as well. The future citizen should learn both lessons; for the man who is unwilling to do his duty has no moral claim upon others to do theirs.

The foregoing remarks are particularly pertinent to a republican government, because under such a government the citizen's measure of rights, and so of duties, is the largest. Here we must observe the important distinction between civil and political rights. The first relate to civil society, the second to civil government. Life, liberty of person, freedom of movement, ownership of property, use of the highways and public institutions, are civil rights. The suffrage, the right to hold

office under the government, and general participation in public affairs are political rights. These two classes of rights do not necessarily exist together; civil rights are sometimes secured where men do not vote, while men sometimes vote where civil rights are not secured; moreover, both kinds of rights may be forfeited by the citizen through his own bad conduct. Evidently political rights are subordinate to civil rights. Men participate in governmental affairs as a means of securing the great ends for which civil society exists. But the great point is this—republican government can be carried on successfully only when the mass of the citizens make their power felt in political affairs; in other words, perform their political duties. To vote in the interest of good government, is an important political duty that the citizen owes to the state. Still other political duties are to give the legally constituted authorities one's moral support, and to serve the body politic when called upon to do so. These duties grow out of the corresponding rights, and to teach them is an essential part of sound education.

It has been remarked that good government rests upon the facts of human nature and society, that such a government is a complicated machine, and that it is an interesting subject of study. It is also to be observed that the successful operation of such a government calls for high intellectual and moral qualities, first on the part of statesmen and public men, and secondly on the part of the citizens themselves. There are examples of an ignorant and corrupt people enjoying measurable prosperity under a wise and good monarch; but there is no example of a democratic or republican state long prospering unless there is a good standard of intelligence and virtue. This is one of the lessons that Washington

impressed in his Farewell Address: "In proportion as the structure of a government gives force to public opinion, it is essential that public opinion shall be intelligent."

Government deals with man in his general or social relations. Robinson Crusoe living on his island neither had, nor could have had, a government. Man is born for society; or, as Aristotle said, "man has a social instinct implanted in him by nature." Again, man is political as well as social; or, as Aristotle says, "man is more of a political animal than bees, or any other gregarious animal." Hence the same writer's famous maxim, "Man is born to be a citizen."

These last remarks bring before the mind, as a subject of study, man in his relations to his fellow men. The study of man in these relations has both practical and disciplinary value. At first man is thoroughly individual and egotistical. The human baby is as selfish as the cub of the bear or of the fox. There is no more exacting tyrant in the world. No matter at what cost, his wants must be supplied. Such is his primary nature. But this selfish creature is endowed with a higher, an ideal nature. At first he knows only rights, and these he greatly magnifies; but progressively he learns, what no mere animal can learn, to curb his appetites, desires, and feelings, and to regard the rights, interests, and feelings of others. To promote this process, as we have already explained, government exists. In other words, the human being is capable of learning his relations to the great social body of which he is a member. Mere individualism, mere egotism, is compelled to recognize the force and value of altruistic conviction and sentiment. And this lesson, save alone his relations to the Supreme Being, is the greatest lesson

that man ever learns. The whole field of social relations, which is covered in a general way by Sociology, is cultivated by several sciences, as ethics, political economy, and politics; but of these studies politics or government is the only one that can be introduced in didactic form into the common schools with much success. In these schools civil government should be so taught as to make it also a school of self-government.

It may be said that so much history and politics as is found in these volumes, or so much as can be taught in the public schools, does not go far enough to give to these studies in large measure the advantages that have been enumerated. There would be much force in this objection, provided such studies were to stop with the elementary school. But fortunately this is not the case. The history and the politics that are taught in the elementary school prepare the way for the history and the politics that are taught in the college and the university. Furthermore, and this is in one aspect of the subject still more important, they also prepare the way for much fruitful private study and reading in the home.

II. METHODS OF STUDY AND TEACHING.

Under this head history will be considered only so far as it is involved in politics. Our first question is, Where shall the study of government begin? The answer will be deferred until we have considered the general features of the government under which we live.

The United States are a federal state, and the American government is a dual government. Our present National Government dates from the year 1789. It was created by the Constitution, which, in that year, took the place of the Articles of Confederation. At that time the State governments were in full operation, and it was

not the intention of the framers of the Constitution, or of the people who ratified it, to supersede those governments, or, within their proper sphere, to weaken them. Experience had conclusively shown that the country needed a stronger National Government, and this the people undertook to provide. So they undertook to accomplish in the Constitution the objects that are enumerated in the Preamble.

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The Constitution also formally denied some powers to the United States and some to the States; that is, it forbade the one or the other to exercise the powers so prohibited. (See Article I, sections 9, 10.) The understanding was that the mass of powers not delegated to the Union exclusively, or forbidden to the States, continued to remain in the hands of the people in their State capacities. Moreover, this understanding was expressly asserted in Article X of the Amendments.

Accordingly, the Government of the United States must be studied under two aspects, one National and one State. The case is quite different from what it would be in England or France, both of which countries have single or unitary governments. This duality makes the study more interesting, but more difficult, and suggests the question whether it should begin with the Nation or the State. The answer must be deferred until still other facts have been taken into account.

The powers that the State Governments exercise are exercised through a variety of channels. (1.) Some are exercised directly by State officers. For the most part these are powers that concern the State as a whole. (2.) Some are exercised by county officers within the county. (3.) Some are exercised by town or township officers within the town or county. (4.) Some are exercised by city or municipal officers within the city. (5.) A few fall to officers elected by divisions of townships, as road-masters and school directors.

Items 2, 3, 4 and 5 of this enumeration constitute Local government, which the people of all the States, in some form, have retained in their own hand. Here we meet a political fact that distinguishes us from some other countries, the vigorous vitality of local institutions. France, for example, although a republic, has a centralized government; many powers are there exercised by national officers that here are exercised by local officers, while there the state often asserts direct control over the local authorities. Strong attachment to local self-government, and opposition to centralized government, is one of the boasted glories of the English-speaking race. Subject to the State constitution, the State Legislature is the great source of political power within the State. The county, the township, and the city owe their political existence and peculiar organization to the State Constitution and laws.

Different States have organized local government in different ways. Speaking generally, there are three types—the Town type, the County type, and the Mixed type. The Town type is found exclusively in the New England States. It throws most of the powers of local government into the hands of the town, few into the hands of the county. The County type, which is found

in the Southern States and in a few others, reverses this method; it throws all local powers into the hands of the county, and makes the sub-divisions of the county merely an election precinct, the jurisdiction of the justice of the peace, and perhaps the unit of the militia company. The Mixed, or Compromise system, as its name implies, combines features of the other two. It makes more use of the county, and less of the town, than New England; more of the township, and less of the county, than the South. It is found in the Central States and generally, but not universally, throughout the West.

Now not much argument is needed to show that the study of government, even within the limits of the elementary school, should embrace the two spheres in which the American Government moves, the sphere of the Nation and the sphere of the State. Neither is much argument called for to show that the study of the State should embrace Local government, as well as State government proper. The argument on the whole subject divides into two main branches—the one practical, the other pedagogical.

Unfortunately, the time given to the study of government in the schools has not always been wisely distributed. For many years the National Government received disproportionate attention, and such, though perhaps in less degree, is still the case. But, important as the powers of the Nation are, the common citizen, in time of peace, has few relations with it outside of the Post Office Department, while his relations with the State are numerous and constant. President Garfield, in 1871, said: "It will not be denied that the State government touches the citizen and his interests twenty times where the National Government touches him once."

Still another point may be urged. An American State is a distinct political community. It is a separate commonwealth having its own constitution, laws, and officers. It has its own history. The people boast its services to the country. They point to its great names. They glorify the associations that cluster about its name. They dwell upon its typical or ideal life. All this is educative in a striking sense; such an environment necessarily reacts upon the people. Who can measure the effect of the old Bay State ideal, or the Old Dominion ideal, upon the people of either State ?

Once more, Local government has received too little attention as compared with State government proper. Township or county government is on such a diminutive scale that to many it seems a subject unworthy of serious study. But it is important to teach the youth of the county that their future prosperity and happiness, as a rule, will depend upon what is done by road-masters, school directors, township trustees or supervisors, county commissioners or county courts, city authorities, and the like, far more than upon what is done by the Governor or the President. The common citizen is tenfold more concerned in the proceedings in the courts held by justices of the peace and by county judges than in the causes that are decided by the Supreme Court of the United States.

Government is fundamentally an information or guidance study. It is put in the schools to teach the pupil how to perform his political duties intelligently when he comes to the state of manhood. In order that he may perform these duties intelligently, he must understand the nature and the ends of government, whether National, State, or Local, and the mode of its operation.

The fact is, however, that characteristic features of our government are ill understood by thousands of our citizens. The functions of the Executive and of the Judiciary are often confounded; likewise the functions of State authorities and National authorities. A multitude of citizens participate in every election of electors for President, who do not know how the President is elected. The line dividing the State sphere from the National sphere is a very hazy matter to many persons who consider themselves intelligent. Owing partly to this fact, and partly to the greater prominence of the Union, there is always a tendency in many quarters to hold the National authorities responsible for what the State authorities have or have not done. The adjustment of Local Government to the State and National Governments is another matter concerning which many are confused. Tax-payers can be found in every neighborhood who think the taxes that they pay to the township or the county treasurer go to Washington.

What has been said will suffice for the practical branch of the argument. Taking up the pedagogical branch, let us first observe the nature and the origin of the child's early education in respect to government.

It is in the family, in personal contact with its members, that the child forms the habits of obedience and deference to others. It is here that he learns, in a rudimentary and experimental way, that he is part of a social whole. Here he acquires the ideas to which we give the names *obedience*, *authority*, *government*, and the like. His father (if we may unify the family government) is his first ruler, and the father's word his first law. Legislative, executive, and judicial functions are centered in a single person. These early habits and ideas are the foundations of the child's whole future education in government, both practical and theoretical.

His future conception of the governor, president, king, or emperor is developed on the basis of the idea of his father; his conception of society, on the basis of the idea of his home; his conception of government by the State, on the basis of family government. Of course these early habits and ideas are expanded, strengthened, and adjusted to new centers.

While still young, the child goes to school. This, on the governmental side, is but a repetition of the home. It is the doctrine of the law that the teacher takes the place of the parent: *in loco parentis*. The new jurisdiction may be narrower than the old one, but it is of the same kind. The education of the school reinforces the education of the home in respect to this all-important subject. The habits of obedience and deference are strengthened. The child's social world is enlarged. At first he thought, or rather felt, that he was alone in the world; then he learned that he must adjust himself to the family circle; now he discovers that he is a member of a still larger community, and that he must conduct himself accordingly. The ideas of authority, obedience, law, etc., are expanded and clarified.

About the time that the child goes to school he begins to take lessons in civil government. This also is developed on the basis of his previous home-training. It begins at the very door-step. The letter-carrier, the policeman, the justice of the peace, and the postmaster introduce him to the government of the outer world. Some or all of these officers he sees and knows, and others he hears about. The very mail wagon that rattles along the street teaches its lesson, and so do other symbols of authority that confront him. He attends an election and hears about the caucus. As he grows older, the town council, the court of the local magistrate, and the constable or sheriff teach him the

meaning of the three great branches of government. His ears as well as his eyes are open. Politics is the theme of much familiar conversation to which he listens. With all the rest, he reads the newspaper, and so enlarges his store of political information.

Still other agencies contribute to the grand result. The church, public meetings, societies of various kinds, all teach the lessons of order and discipline.

Such, in general, are the steps by which the child makes his way out of the world of isolation and selfishness into the world of social activity and light. Such is the character of his early education in morals and politics. Nor is it easy to overestimate these early lessons. To suppose that the child's political education begins when he first reads the Constitution of the United States, is like supposing that his moral education begins when he is first able to follow the preacher's sermon.

All this training is unconscious and mainly incidental, and the more effective for that very reason. But such training will not meet the ends of intelligent citizenship. Nor can the political education of citizens be left to the newspaper and the political speaker. Government must be formally taught in the schools. But what shall be the order of study? Shall the child begin at Washington, at the State capital, or at his own home? In other words, shall he begin with the National Government, with the State government proper, or with Local government?

For a time the student of government should continue to work on the material that lies right about him, just as the student of geography should find his first lessons at home. On this point the arguments already presented are decisive. The practical argument shows that this will be the most useful course to pursue. The pedagogical argument shows that it is also the easiest, the

most natural, and the most successful. In general then the method should be—first, the Local Government; second, the State Government, and last, the National Government.

We have now reached a point where we can define more clearly and fully the special object of the series of books to which this is a general introduction. These books are designed for the first stage of the formal study of the subject of Government. They are written on the theory announced; viz.: That the child's political education begins at home, and should for a time proceed from the home outward. The series is appropriately named The State Government Series. A volume will be given to a State. The successive volumes will first present an outline sketch of the civil history of the State, and then outline sketches of the State and National Governments as they now exist and operate.

With two or three practical suggestions to teachers, this Introduction may fitly close.

The first of these suggestions is that if the proper course be taken, the study of the National system will not be deferred until the pupil has made a complete survey of the State System. The State system can no more be understood alone than the National system alone. When the intelligent pupil, and particularly a boy, is old enough to take up one of the volumes of this series, he will already have made some progress in discriminating the two systems. He will know that Congress and the President belong to the Nation, the Legislature and the Governor to the State. But at the outset it may be advisable for the teacher to broaden and deepen this line of division. This can be done, if need be, in one or more oral lessons devoted especially to the subject. Moreover, the teacher should keep an eye on this line from first to last. He should encourage the pupil to read the

Constitution of the United States, and in particular should direct his attention to the general powers of Congress as summed up in Article I, section 8, which are the driving wheels of the National Government.

The second observation is that unremitting care must be taken to make the instruction real. The common-places about the abstractness and dryness of verbal instruction, and particularly book instruction, will not be dwelt upon, except to say that they apply to our subject with peculiar force. The study of history, when it is made to consist of memorizing mere facts, is to the common pupil a dry and unprofitable study. Still more is civil government dry and unprofitable when taught in the same manner. There is little virtue in a mere political document or collation of political facts. The answer that the school boy made to the question, "What is the Constitution of the United States?" is suggestive. He said it was the back part of the History that nobody read. Hence the book on government must be connected with real life, and to establish this connection is the business of the teacher. On this point three or four hints may be thrown out.

The teacher should not permit the Governor, for example, to be made a mere skeleton. He should see rather that he is made to the pupil a man of flesh and blood, holding a certain official position and exercising certain political powers. It is better to study the Governor than the Executive branch of the government; better to inquire, What does the Governor do? than, What are the powers of the Executive?

The teacher should stimulate the pupil to study the political facts about him. He should encourage him to observe the machinery of political parties, the holding of elections, council meetings, courts of local magistrates, and the doings of the policeman, constable, and

sheriff. This suggestion includes political meetings and conversations upon political subjects. By observation an undue personal attendance upon such proceedings is not meant. To that, of course, there might be several objections.

Pupils in schools should be encouraged to read the newspapers, for political among other reasons. The publications prepared particularly for school use to which the general name of "Current Events" may be given, are deserving of recommendation.

Still another thought is that the study be not made too minute. It should bear rather upon the larger features of the special topics. This remark is particularly applicable to the judiciary, which nearly all persons of ordinary education find more or less confusing.

The suggestions relative to observation of political facts are peculiarly important in a country like our own. To understand free government, you must be in touch with real political life.

In teaching Civil Government, the first point is to develop Civic Spirit—the spirit that will insist upon rights and perform duties.

The last word is a word of caution. The method that has been suggested can easily be made too successful. Our American atmosphere is charged with political interest and spirit; and, while the pupil who takes a lively interest in current politics, as a rule, will do better school work than the pupil who does not, the teacher must exercise care that partisan spirit be not awakened, and that occupation in current events do not mount up to a point where it will interfere with the regular work of the school.

B. A. HINSDALE.

PART I

HISTORY OF SOUTH DAKOTA

CHAPTER I

EARLY HISTORY AND GENERAL CHARACTER OF THE NEW NORTHWEST .

1. **Elements that Shape History.**—History is not only molded by men and their purposes, but by physical conditions, such as natural resources and climate—by the entire character of what is called our physical environment. The history of a State or section cannot be understood or its importance appreciated, unless we know its early conditions, its relations to other States or sections, and its physical characteristics. Thus, our National history is so intimately connected with colonial conditions, its politics so much an outgrowth of colonial politics, its spirit such a development of colonial spirit, that we must understand colonial history and conditions in order to appreciate its significance. To understand fully the facts of our own State history, it will be necessary for us to know something of the early history and development, as well as something of the general character, of that portion of the Great West of which it is a part.

2. The Louisiana Purchase.—South Dakota forms one of the group of States sometimes called the New Northwest, whose eastern boundary is the upper Mississippi, and its western the ocean. It is drained by the Missouri and Columbia Rivers and their branches. The great body of this region constitutes the northern part of the Louisiana Purchase, for which, in 1803, the United States paid France the sum of 80,000,000 francs (\$15,500,000). The extreme northwestern part of the New Northwest was secured under the claim of discovery and exploration, based particularly on the work of the Lewis and Clark Expedition in 1804-6. Louisiana had been held first by France under claim of discovery, La Salle having secured it for his sovereign by his exploring trip down the Mississippi (1682) by way of the Great Lakes and the Chicago-Illinois portage.

3. Value of Louisiana to the United States.—By a treaty entered into at Paris in 1763, Louisiana came into the possession of Spain. Napoleon Bonaparte, dreaming of world conquests which should make France the first nation in Europe, in 1800 conceived the idea of a great colonial empire in America, and by promises of political aid to Spain secured the return of Louisiana to France. His plans of empire miscarried, and in 1803 he was ready to sell this magnificent domain for a trifle. This purchase of territory by the United States was the beginning of her real greatness; it was the "open sesame" to the political and industrial possibilities, the realization of which has been, at least partially, witnessed in the nineteenth century. The importance of this territory

to the United States was fully realized by President Jefferson, who said, when there was a prospect of Napoleon establishing an empire there: "The day that France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low-water mark. From that moment we must marry ourselves to the British fleet and nation."

4. The Old and the New Northwest.—The Northwest Territory of our earlier National life, including the five central States bordering upon the Great Lakes, played a most important part in the history of the country.* In all our National struggles we owe much to the moral fibre, intellectual power, and political genius of the people of the Old Northwest, while industrially and commercially it is second only to the mother-States of the East. To-day, the New Northwest seems to be taking a similar part in the industrial and political development of the Nation, and the eyes of people are turned to see what shall come out of the West. This section has become prominent in industrial lines, and its political power and influence are already being recognized. When American history for the twentieth century shall have been written, there is little doubt that in it the New Northwest will have an important place; there can be little doubt that it will contribute much to the industrial and political greatness of the Nation in the future.

5. The Lewis and Clark Expedition.—The earliest reliable account given of the country now called the Dakotas is to be found in the journals of the Lewis and Clark Expedition, which, starting

* B. A. Hinsdale, *The Old Northwest*, N. Y., 1888.

from near the mouth of the Missouri, followed the windings of the river to the region of its head waters, crossed the mountains, and thence descended the Columbia to the ocean. While this account gives very little scientific information concerning this particular region of country, it furnishes an interesting and valuable account of its general features, its inhabitants, rivers, and wild game. Many places described in the journals of the expedition are familiar to the people of the Dakotas. Spirit Mound, a butte near Vermillion, was visited, possibly to test the superstitious belief of the Indians that "a small people lived there." The site of Yankton is described as "a handsome prairie gently rising from the river on the north side, a small distance above which are beautiful groves of cottonwood on both sides of the river." The Big Sioux, the "Whitestone" (Vermillion), the "Jacques" (James), the Niobrara, the "Du Chien or Dog" (Cheyenne), and other tributaries of the Missouri are mentioned in the journals. Bon Homme Island is mentioned, this and other names indicating that the French had already been there. "A bluff with a stratum of black, resembling coal" was passed in what is now North Dakota, near Bismarck. The company spent the winter of 1804-5 in Fort Mandan, on the west bank of the Missouri, just south of the Knife River. The next year they wintered west of the mountains, and in 1806 returned the way they came to St. Louis.*

6. Early Fur Industry of the Northwest.—The

* *History of the Expedition under the Command of Lewis and Clark*, 4 Vols., N. Y., 1893.

British and American fur companies were the pioneers in the settlement of this region, and the river banks were dotted with their outposts and trading stations at convenient points. The Lewis and Clark Expedition gave a great impetus to the fur trade, and the bold and hardy pioneers of the fur companies followed the path it had made to the Pacific. The war of 1812 interrupted the business of these companies, but after 1815 it rapidly assumed large proportions. The employés of these companies carried their business throughout the whole New Northwest to the Pacific, and were both explorers and settlers.

7. General Features of the New Northwest.—Probably no other part of the Union has more varied natural resources, or the possibility of a greater diversity of industry, than this portion of the West. Its mountains are bountifully supplied with a variety of minerals; its rivers, in their upper courses, afford water power for manufacturing purposes; while its broad expanses of alluvial prairie lands, intersected by the valleys of the rivers, offer unrivaled opportunities for a diversity of agricultural pursuits. This great region, forming the northern part of the Louisiana Purchase, and including as well the territory west of the Rocky Mountains claimed by reason of the Lewis and Clark explorations, has been but little understood until recent years. The school geographies of the first half of the century located the "Great American Desert" in the southern part of this area, and not until hunters and traders had ventured to explore it, and were able to testify to its general character, did the term cease to be applied.

8. Its River Systems.—Two great rivers, with their tributaries, drain the territory of the Northwestern States, the Missouri and the Columbia; one sending its waters to the Gulf, and the other reaching the Pacific. Their sources, not many miles apart, are in the mountains of Idaho and Montana, fed by the snows and rains of the highlands. The Missouri rolls its turbid waters through mountain and plain for a distance of over three thousand miles. It affords a valuable water-way for transportation, and is navigable for more than two-thirds of its entire length. Its most important tributaries are from the west, among which are the Kansas, the Platte, the Niobrara, the Cheyenne, the Little Missouri, and the Yellowstone. The latter is famous for its grand and picturesque scenery, and at its source is the National Park. The Columbia, taking its beginning in the two forks named after the explorers, Lewis and Clark, is the largest stream on the western coast. It is but little over one-third as long as the Missouri, and so abounds in water-falls and other obstructions that its navigation is not an important feature. The eastern tributaries of the Missouri are unimportant. The James River of the Dakotas has the distinction of being the longest unnavigable river in the world.

9. Mountains and Minerals.—The Rocky Mountains form the western boundary of the great plains of the West, and carry in their granite depths most valuable and varied stores of minerals. The Black Hills of South Dakota and Wyoming are the only mountains of any importance not included in the Rocky Mountains proper. Colorado is the first State

in the Union in the amount of silver produced, second in the amount of gold, and fifth in the production of copper, while it has valuable deposits of coal and petroleum. Montana is the first State in the Union in the production of copper, second of silver, and fourth of gold. Idaho also has valuable gold, silver, and copper mines. South Dakota ranks third among the States in the production of gold, and the output is increasing yearly. The State also has valuable mines of silver, copper, tin, mica, and graphite in the Black Hills; other minerals, as iron, lead, nickel, etc., are to be found in more or less abundance. Wyoming, Montana, Washington, and the Dakotas produce more or less coal of varying qualities, but their resources in this line have not been developed to any great extent. The coal of the Dakotas is known as lignite, but it is valuable for fuel. Deposits are to be found in the western parts of both States.

10. Native Inhabitants.—The early inhabitants were mainly members of the great Dakota or Sioux Nation of Indians. The various tribes of this nation, including those distantly related, occupied that portion of the Northwest included between the Mississippi River and the Rocky Mountains, the area west of the mountains being occupied by the Columbians. The Sioux originally held possessions as far east as the Great Lakes. One of their tribes remained in this region surrounded by the warlike Algonquins—the Winnebagoes, on Green Bay of Lake Michigan. It is believed by some that a part of the Sioux who lived east of the Mississippi are to be identified with the Mound-Builders, about whose origin there has

been so much speculation. In their later history the Sioux became famous for their horsemanship, having come into the possession of horses, probably through the Spanish occupation of Mexico, and through the visits of Spanish exploring parties that penetrated into their territory—those of Narvaez, Coronado, and De Soto. The Sioux were among the most vigorous and aggressive of their race, a fierce and high-strung people, devoted to war and the chase. Their homes were along the banks of the streams. The wild buffalo roamed in large herds over the western plains, and were hunted by the Indians; buffalo meat was an important article of food, while the hides, skillfully tanned, made coverings for their lodges and supplied them with robes.

11. Indian Legends of Pipestone.—Just beyond the eastern border of South Dakota, some thirty or forty miles northeast of Sioux Falls, are located the famous pipestone quarries, yielding a reddish, soft stone, easily cut, and now extensively used for ornamental purposes. The Indians have various traditions concerning this stone and the locality where it is found. It is a tradition of the upper Missouri Indians that the pipestone was formed from the flesh of their ancestors. The story is that a great flood destroyed all the nations of the earth. To escape this flood, the tribes of red men assembled at this place, but all were overcome by the waters, save a maiden who was caught up by an eagle and carried to a place of safety, and whose descendants again peopled the earth. The flesh of those who perished was converted into the red pipestone. It is used to make the pipes which

are smoked as a symbol of peace, while the eagle feather is worn by the brave as a decoration. The locality where the pipestone is found is held to be neutral ground, belonging to all tribes in common. Another tradition of the Mississippi River Indians makes this locality the place where the Great Spirit called the tribes of red men together when they were at war, and, making a great pipe from the rock, smoked it over them all and commanded them henceforth to be at peace. This legend has been preserved in Longfellow's beautiful poem, "Hiawatha." Another legend identifies the place with the creation of man. Thus a group of Indian traditions is connected with this place and the red pipestone, and the locality has always been a Mecca for the Indians of the Northwest. The following is a part of the legend embalmed in the poetry of Longfellow:

"On the Mountains of the Prairie,
On the great Red Pipe-stone Quarry,
Gitche Manito, the mighty,
He the master of life, descending,
On the red crags of the quarry
Stood erect, and called the nations,
Called the tribes of men together.

* * * * *

From the red stone of the quarry
With his hand he broke a fragment,
Moulded it into a pipe-head,
Shaped and fashioned it with figures;
From the margin of the river
Took a long reed for a pipe-stem,
With its dark green leaves upon it;
Filled the pipe with bark of willow,
With the bark of the red willow;

Breathed upon the neighboring forest,
Made its great boughs chafe together,
Till in flames they burst and kindled;
And erect upon the mountains,
Gitche Manito, the mighty,
Smoked the calumet, the Peace-Pipe,
As a signal to the nations."

NOTE.—The titles by which the different parts of the United States are held, are shown by B. A. Hinsdale, *How to Study and Teach History*, Chap. XX.

CHAPTER II

GEOLOGICAL HISTORY OF SOUTH DAKOTA *

12. Character of the Surface.—South Dakota is remarkable for its varieties of surface and varying altitudes. Bigstone Lake, on the eastern border, is less than a thousand feet above sea level, while some of the peaks of the Black Hills rise to a height of over seven thousand feet. This range of altitude surpasses that found in any of the States east of the Mississippi. Along the Missouri and James Rivers are found plains as level as a floor, while to the west of the Missouri, and in smaller areas on the summits of the “coteaus” (low hills or divides), are table lands with gentle undulations. In the Black Hills region may be found all the picturesque scenery and rugged wildness characteristic of the Rocky Mountains. Some of the streams have worn for themselves narrow cañons hundreds of feet deep. The craggy heights, deep valleys, and wooded slopes of this region make the greatest possible contrast with the rest of the State. Some portions of the State are exceedingly fertile, while others, known as the “Bad Lands,” are devoid of vegetation and almost impassible. In some parts the alluvial plains afford no stones of any size, while in others, as at Sioux Falls, Dell Rapids, and in the Black Hills, large quarries of valuable building stone are found.

13. Surface Formation.—It is believed that in

* This chapter may be omitted at the discretion of the teacher.

the beginning the earth was a molten sphere, surrounded by the gases of volatile substances, mingled with which was the vapor of what is now its vast bodies of water. As the body of the earth cooled, a crust appeared, which hardened and thickened, and became crumpled and broken as the cooling process continued. Several agencies contributed to surface formation, prominent among which was the bending and breaking of the crust as it became thicker and more dense, this process being complicated by volcanic outbursts. Another important element in molding the surface was the action of water, which filled the low places of the earth's crust as it cooled and became folded and broken into irregular forms. The waves and currents of its early seas, the erosion and flooding of rivers, and the washings of the copious rains that deluged the earth in the earlier ages, were important factors in bringing the earth's surface to its present form and condition. The third great agency in surface formation was the ice sheets of a later age, which, working their way southward from the north, completely covered large areas of surface. They are known as glaciers. These heavy bodies of ice gradually worked their way over the surface and crowded down the valleys, leaving, when they came to melt, immense piles and lines of rock and earth. All of this work was preparing the earth for the habitation of man; this was the period when the earth was in the laboratory and workshop of Nature, when its soil was made, its surface fashioned, the great drainage systems of the continents traced, the mountains stored with minerals, and the whole environment arranged

for the support of the varied and wonderful forms of vegetable and animal life of the present.

14. Dakota in Pre-Glacial Times.—Prior to the time of the glaciers, when the waters of the primeval ocean covered vast areas of what is now dry land, the eastern half of Dakota was a great inland sea. The Black Hills stood forth from this as an island, while to the northeast central Minnesota was a land-mass which extended eastward towards Labrador. The shore of this sea was gradually pushed westward by the elevation of the land, and the water was confined within narrow limits in the western portion of Dakota. The action of the waters of this sea contributed much to the geological formation of our State. The great beds of sandstone, now far below the surface, were originally the sand-driftings of the waters of this sea. It was during this period that the vegetation grew which formed the beds of lignite found in the western part of the State, and also in North Dakota. It was during this period that the great plains were leveled and the mountain peaks and ridges thrown up. The soil was sorted and sifted by the action of the waters and made ready for the use of man; coal was stored by the burying of great forests; the ores were prepared and stored for the miner; and it remained for later ages to bestow only the finishing touches to man's habitation.

15. The Glacial Period.—For some reasons not entirely understood, there was such a change of climate in the later geological age that vast fields of ice, hundreds of feet in thickness, were formed in the north, which gradually pushed their way south, filling the

river valleys, leveling hills and mountains, rending and crushing the rocks, and carrying over long distances the debris thus produced. This debris, when the ice came to melt and recede, formed "moraines," or ridges of earth and boulders, which can yet be distinctly traced in the eastern part of the State. Where surface rocks are to be found, the planing and scoring of the glacier, as it ground with its great weight over the rocks, can be readily seen. The boulder ridges that are commonly found in the eastern part of the State are debris left by the glaciers as they melted. The ice came into the Dakotas from the northeast, by way of the Red River Valley, and thence pushed over the divide into the valley of the James, which was then occupied by the Missouri, reaching the present channel of the latter at several points, viz., Walworth, Pierre, Running Water, and Vermillion. From these points the ice gradually receded, melting and forming lakes of water, and the surplus waters were carried off by the rivers. Hence, glacial markings and glacial remains are to be found only in the eastern part of the State.

16. Benefits of the Ice Age.—Prof. J. E. Todd, State Geologist of South Dakota, thus summarizes the benefits of glacial action: "It gave the beautifully varied yet even topography which is found in the eastern part of our State. It mingled the various ingredients of the rocks over which it passed, and produced the uniform and rich soil which is characteristic of the whole region east of the Missouri. It produced, in many localities, beautiful lakes, valuable not only for ornamenting the landscape, but also for

the storing of moisture in this region. Several of these have become known as summer resorts (among which are Lake Kampeska, Lake Madison, and Big Stone Lake). By the same influence the picturesque terraces were formed along the streams which are so admired both as to appearance and healthfulness for the location of towns and cities. The convenient storing of subterranean waters also has been, in many cases, perfected by the work of the ice."*

17. Soil and Surface.—The general facts of geology that have now been presented will help us to understand the common conditions of soil and surface in our State. In the eastern part, the surface has been formed and molded mainly by the action of ice, and modified by the action of the streams since that period. The subsoil of this section is the so-called "drift," resulting from glacial action, being the debris thereby produced, indiscriminately mixed and spread over the surface of the rocks. The soil itself is rich and very fertile. The level and slightly rolling character of the surface, as well as the contour of the valleys and ravines, is to be attributed to the planing and molding of the ice sheet. Stumps and logs are sometimes found buried in this drift thirty or forty feet below the surface, while pieces of wood have been taken out at a depth of sixty feet. Granite boulders are found in the drift that have come from far north in Canada. All this shows the thorough and promiscuous mingling of the materials of the subsoil by glacial action. The ice did not reach west of the Missouri, and here water and volcanic action

**A Preliminary Report of the Geology of South Dakota, 1894.*

alone have produced the character of surface and soil. The greatest effects of the action of water are to be seen in the Black Hills, the cuttings and erosions of its rivers sometimes extending to hundreds of feet in depth.

CHAPTER III

PHYSICAL CHARACTERISTICS AND RESOURCES OF THE STATE

18. Physical Divisions of the State.—South Dakota may be roughly divided into three sections for the study of its surface and industries: (1) The Black Hills Region, which is mountainous and contains the only forests in the State; (2) The Table Lands, surrounding and adjoining the mountainous portions of the Hills, containing the major portion of the State west of the Missouri; and (3) The Eastern Section, which is characterized by the fertile valleys of its rivers.

19. The Black Hills.—This section includes the five counties of Fall River, Custer, Pennington, Lawrence, and Meade. It covers an area of about five thousand square miles. Its system of mountains is but an outlier of the Rocky Mountains, and its mineral products and general features are such as are common to that system. There is hardly a mineral of any importance that is not found in greater or less abundance in the Black Hills. The mountains are covered with heavy forests of pine and spruce, whose dark hue, when seen from a distance, caused the Indians to designate them in their own language as the Black Hills. Burr-oak and white elm are found on the foot hills and in the valleys. The Indians early knew of the presence of gold in the Hills, but it was not known to white men prior to 1874, when an expe-

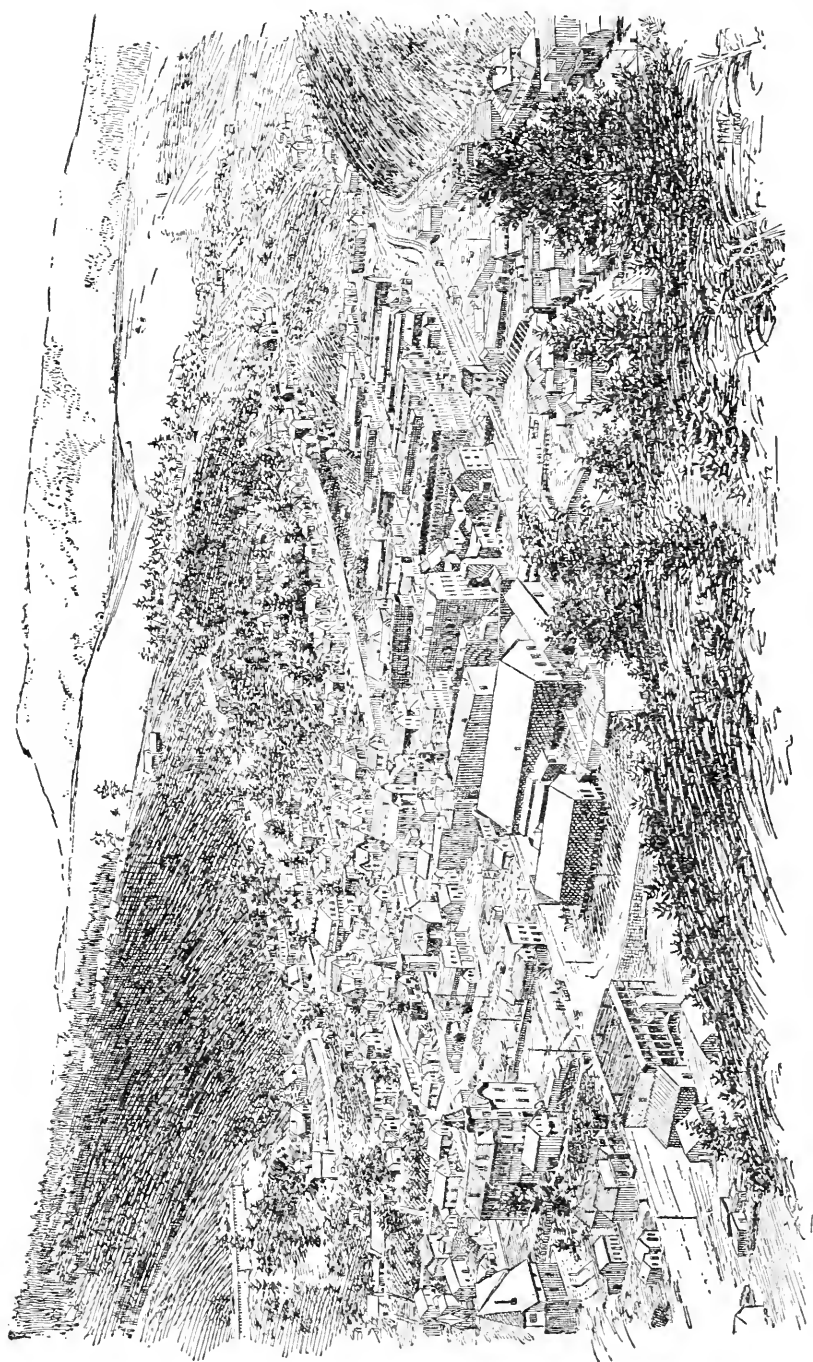
dition under the command of Lieut.-Colonel Geo. A. Custer visited this region. Prior to this time, the Indians had brought quantities of gold to the trading posts, and this shortly aroused sufficient interest to lead to the exploration of the region, before the whites had any treaty rights therein. The minerals of the Black Hills render it one of the most important parts of the State, and there is ample evidence that the mineral areas have not yet been adequately opened up, and that the output of the mining industry in the future will far surpass anything known in the past.

20. An Indian Tradition of the Hills.—The Indian is naturally superstitious. He is, to some extent, polytheistic, worshiping the forms and forces of nature. He worships the Great Spirit, which is good, and is in constant fear of the Evil Spirit, to which is attributed all fearful and disastrous events. Mr. Gass, in his *Journal of the Lewis and Clark Expedition*, relates the following superstition which he heard from the Indians themselves: "The Evil Spirit was mad at the red people and caused the mountains (of the Black Hills) to vomit fire, sand, gravel, and large stones to destroy them; but the Good Spirit had compassion and put out the fire, chased the Evil Spirit out of the mountains, and left the people unhurt. When they returned to their wickedness, the Great Spirit permitted the Evil Spirit to return to the mountains again and vomit up fire; but on their becoming good and making sacrifices, the Great Spirit chased away the Evil Spirit from disturbing them, and for forty snows he had not permitted it to return."*

*Quoted by Andreas in his *History of Dakota*.

There are many volcanic peaks in the Hills, and this tradition probably refers to the time when these volcanoes were active.

21. The Bad Lands.—This is a name given to a limited area of country southeast of the Black Hills, between the White and the Cheyenne Rivers. It is called “bad ” because of the absence of vegetation and the difficulty of traversing it. The surface has been carved into curious shapes and fantastic forms by the washings of rains and the erosion or cutting of the streams. The region abounds in fossils, *i.e.*, bones of animals that have been buried in the earth and preserved, at least in form. So numerous are the fossil remains that it is believed that at some period the animals must have perished here in droves, overcome by floods or storms. These bad lands have a world-wide notoriety, because of their wealth of fossil remains, and because of their peculiar appearance. Professor Todd gives the following description of these lands: “Approaching the bad lands over the ordinary undulating prairie, one suddenly comes to the verge of a cliff or the top of a ridge, and finds himself gazing, perhaps from a height of two or three hundred feet, upon a vast, barren labyrinth, covering many square miles, consisting mainly of crooked ravines and jagged ridges. In some places these ridges widen and rise into broad buttes, capped with tables of harder strata, supporting grassy meadows with a few gnarled cedars. The ravines, also, sometimes widen into valleys, having limited grassy flats interspersed with dry watercourses of almost snowy whiteness. Here and there, the clustered shapes take form, and you see the



VIEW OF DEADWOOD.

ruins of some strange city. Towers, walls, domes, chimneys, turrets, and spires appear so distinctly that you instinctively watch for the goblin inhabitants to appear. But you see only the gray 'chipmucks' scampering into the crevices near you; or, with steadier gaze, you recognize a few 'big-horns' on the side of yonder gigantic cathedral, or a few scattering sheep in a distant valley. Such a description is particularly applicable to the bad lands along the White River, which are carved out of the lake deposits of the tertiary formation. The prevalent colors there are white and light shades of red, yellow, and gray, which are disposed in narrow, horizontal bands, cutting through all the forms like the layers of a vast onyx. About the head of Grand River, and in some localities along the Missouri, similar barren areas have been cut out of the dark drab clays of the cretaceous formation. Because of the greater uniformity of color and composition and the general looseness of structure, they are less picturesque, though otherwise much resembling those of the White River. As a compensating feature, however, there occur beds of lignite, which here and there have been ignited and have burned with intense heat. Acres of black, lava-like slag appear, and stretches of clay burned to a brick-red salmon color. Here and there the resultant settling has opened deep fissures like those produced by earthquakes, so that many are firmly convinced that volcanic forces have been at work there at no very distant day."

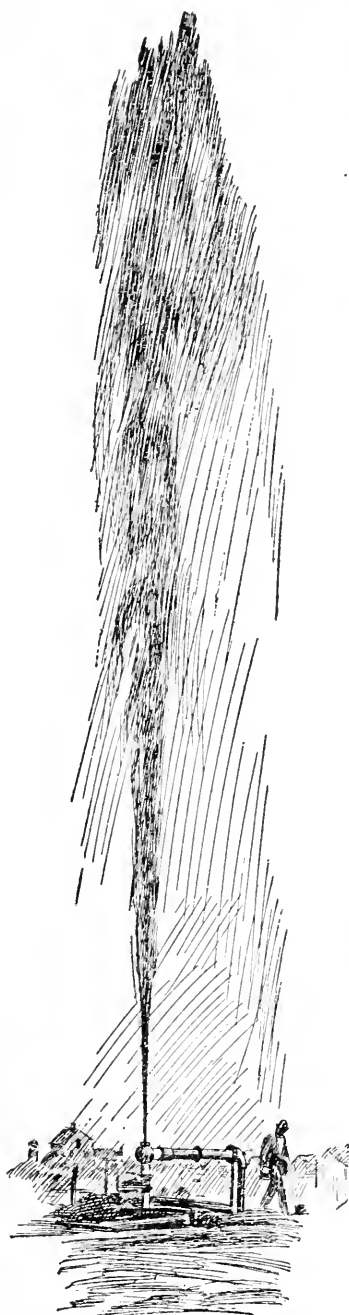
22. The Table Land Region.—The entire section of the State west of the Missouri, and not included in the Black Hills, is classed as table lands. Five

branches of the Missouri take their beginning towards the western part of the State, and flow across these lands from west to east. They are the White, the Bad, the Cheyenne, the Moreau or Owl, and the Grand Rivers. The face of the country is deeply cut by these rivers, whose valleys are from one to four hundred feet below the general level, the larger being of some width and terraced. The rainfall is not sufficient to render general farming feasible, and immense herds of cattle and horses and large flocks of sheep roam over the broad plains. It is in the care of these herds and flocks that the typical "cow-boy" of the West is employed. The wild prairie grasses are particularly nutritious, and cattle feed the year round upon these ranges. The finest meats that reach the eastern markets come from these ranges, and are fattened without corn or other grain. Valuable beds of lignite are found in the northwestern part. The section has no railroads at present (1898), although the Northwestern system has reached the Missouri at Pierre, and the Milwaukee system at Chamberlain, whence roads will ultimately cross to the Hills.

23. General Features of the Eastern Section.—The eastern section of the State is characterized by large and fertile river valleys that cross it from north to south, viz., the eastern half of the Missouri, the James River valley, reaching entirely across the State, and the valley of the Sioux on the eastern border; and in the southern part, the valley of the Vermillion stretches between the Sioux and the James and makes the southern part of the State virtually a

river valley section. The valley of the James is the lowest of the three valleys that cross the State, and has a very slight descent. In the northeastern part, the boundary of the State is formed by Lake Traverse and Big Stone Lake, while the whole upper valley of the Sioux is dotted with lakes, many of which are beautiful sheets of water, and are not only valuable for storing water, but are utilized as pleasure resorts. The western half of the section lies wholly within the artesian basin, except some few elevated points, and artesian wells are successfully used for irrigation purposes and for water-power. The James River, which rises in North Dakota and flows entirely across our State, is an insignificant stream as to the volume of water that ordinarily flows in its channel. In the summer season it dwindles to a narrow creek in its upper course, often forming nothing but a series of deep pools. In the spring it carries a large volume of water, and has all the appearance of a large river. At this season, when rains are heavy, it overflows its banks in places.

24. Industries and Resources of the Eastern Section.—The most fertile parts of the section are along the river valleys, which blend together as they reach the Missouri at the south. It is along these valleys that a diversified form of agriculture flourishes. As we leave the valleys and reach higher ground, we find that grazing and stock-raising industries predominate. A belt of excellent building and ornamental stone is found along the stream valleys from Sioux Falls and Dell Rapids to the vicinity of Mitchell. Brick clays are found in the southeastern part of the



ARTESIAN WELL.

State along the terraces of the Missouri and other streams, while deposits fitted for the production of Portland cement are found in several localities, notably on the Missouri at Yankton. The manufacture of this cement already promises to be an important industry. A diversified form of agriculture prevails in the southern and eastern parts of this section. In the northern and western parts, grazing and stock-raising take precedence, but by greater economy in utilizing the rainfall, together with a larger use of irrigation, the range of industry is widening.

25. Artesian Wells of the State.—The artesian-well basin of the State reaches from the Missouri River eastward to some distance beyond the James. The line of the eastern limit of the basin passes from near Britton, in Marshall county, at the north, in a southerly course, with a sharp deflection to the west in Hanson county, to Vermillion and Elk Point in the southern part

of the State. The pressure and flow of these wells vary much in different localities. A flow of more than 3,000 gallons per minute has been obtained from an 8-inch artesian well. The pressure varies from a few pounds to 200 pounds per square inch. The wells are from 100 to 1,500 feet in depth. They afford a valuable means of irrigation, and furnish a convenient and cheap water-power. The supply of water found in these wells probably comes from the foothills of the Rocky Mountains, the Black Hills, and other ranges in Montana. The amount of this supply which can be utilized has been roughly estimated to be 326,805,600,000 cubic feet annually. This amount of water would fill a river bed a mile wide, 20 feet deep, and nearly 600 miles long.

CHAPTER IV

DAKOTA IN PRE-TERRITORIAL DAYS

26. Trading Companies as Pioneers.—It was not until 1851 that white men had any legal claims to territory within the limits of the Dakotas. The pioneer work of the trading companies previous to this time opened up the way for a throng of settlers who early rushed in and established their claims by "squatter's" rights. Naturally, the companies followed the great rivers, which they used as highways and lines of communication. The Hudson Bay Company, chartered by Charles II. of England in 1670, was earliest in the field, having established itself in the north during the previous century; but American enterprise, early in the nineteenth century, entered into competition with it and took possession of a portion of the profitable trade with the Indians. The American Fur Company, organized in 1809 by John Jacob Astor, succeeded in controlling most of the fur trade in the Missouri Valley, and thus its business extended over the major portion of Dakota. The Hudson Bay Company succeeded only in holding its place in the north along the upper waters of the Missouri, on the Yellowstone, and beyond. The Columbia Fur Company, organized in 1822 by persons formerly in the employment of the Hudson Bay Company, located upon Lake Traverse, at the head of the Red River. By 1826, the American Company of Astor

was able to monopolize the fur trade of the Missouri, and constructed a line of forts and trading houses on the river, which later became either sites for government posts or centers of early settlement. Some trading houses were also built on the James River during the early part of the century. The first actual settlement made by a white man in Dakota was in 1780, at Pembina, by a Frenchman in the employment of the Hudson Bay Company. Fort Pierre was built a short distance above Pierre by Pierre Choteau in 1829, and it was under his conduct that the first steamboats ascended the Missouri about 1830.

27. Early Treaties with the Indians.—Dakota was obtained from the Indians piece-meal. The treaty of Traverse-de-Sioux, in 1851, gave the whites their first legal claim to land within the limits of the Dakotas. This treaty was negotiated with the upper bands of the Sioux Indians, and embraced a strip of land lying between the Big Sioux and what is now the Minnesota State line. It included the site of Sioux Falls, on the south, and the western shore of Bigstone Lake, on the north. The next treaty was in 1858; and secured for the whites, with two small reservations, the remainder of Dakota between the Big Sioux and the Missouri. The northern and western portions of the State were left in the hands of the Indians. The consideration paid by the National Government for the valuable cession of 1858 was, in total amount, \$1,600,000 in the form of annuities for a period of fifty years. The period of permanent settlement begins with the making of this treaty, and from this

time dates the movement to secure a territorial organization and government for Dakota.

28. Later Treaties with the Indians.—For several years after the Indian troubles of 1862, beginning with the New Ulm Massacre in Minnesota, the Indians were warlike, and the United States troops were employed in subduing them.* In 1866 a peace commission was sent to form treaties of perpetual peace and friendship with the wild tribes of the Sioux on the Missouri River. The commission visited the various tribes of the upper Missouri in Montana, and finally succeeded in negotiating a treaty which went into effect in 1868, by which a large portion of Northern and Eastern Dakota was opened up to settlement. In 1874 the discovery of gold in the Black Hills caused the whites to clamor for territory in that section. After many attempts, a treaty for the Black Hills region, included between the north and south forks of the Cheyenne River, was concluded in 1876. No special sum was paid for this tract, the Government binding itself to “provide all necessary aid to assist the Indians in the work of civilization.” In 1868 a treaty with the Sioux Indians secured a small strip of territory west of the Missouri and included between the Cannon Ball and Heart Rivers, not reaching the western boundary of Dakota, but cornering upon the cession of 1876. The large area in Southwestern Dakota, lying between the Missouri River and the Black Hills’ cession, remained as an Indian reservation till 1889, when it also was secured by treaty.

* See Sanford Niles' *History and Civil Government of Minnesota*, in State Series, pp. 80-84, Werner School Book Company.

Practically, all of the remaining territory west of the Missouri was opened to settlement without treaty by an executive order in the year 1880. The last treaty with the Indians for Dakota Territory was made in 1892, when the reservation in Charles Mix County was opened to settlement. A large area in the central and northern part of the Territory was not covered by any treaty. The map on page 133 will show the various cessions that the Indians made by treaty.

29. Settlement of the Sioux Valley.—The somewhat picturesque site of Sioux Falls had attracted the attention of early explorers. The Sioux was called by the Indians the "Thick-wooded River," and a graphic description of the falls had been given by Nicollet in his "Travels in the Northwest." This attractive location became widely known, and two independent movements were started for the settlement of the Sioux Valley. This region was originally attached to Minnesota, and the first form of the Enabling Act for the admission of that State made the Sioux the western boundary. Through the influence of land speculators, an amendment was made by which the boundary of Minnesota was made to run due south from the foot of Bigstone Lake to the Iowa State line, leaving a strip of land some thirty miles in width, to which the Indian title had been extinguished by the treaty of Traverse-de-Sioux. One of the land companies formed for the purpose of effecting a settlement in this region was the Western Town Company, of Dubuque, Iowa, organized in 1856. The other company was organized at St. Paul, and was known as the Dakota Land Company, receiving its charter from the Legislature of

Minnesota in the winter of 1856-7. Representatives of the Western Town Company were first on the ground in the latter part of May, 1856, and secured a portion of the land surrounding the Falls of the Sioux. Returning in the summer of the next year, they began the permanent occupation of their land. Members of the St. Paul Land Company reached the site of Sioux Falls in 1867, shortly after the settlers of the Dubuque Company had established themselves, and they took up a land claim south of that held by the others and began permanent occupation. In 1858 Minnesota was admitted to the Union as a State, and all that portion of the Dakotas east of the Missouri and White Earth Rivers, to the Minnesota and Iowa lines, was left in an unorganized condition, with neither legal name nor government. This condition of things continued until the Territory of Dakota was organized in 1861. During this time the settlers on the Sioux and in the Missouri Valley were without any regular means of government. The Sioux Falls settlement prospered from 1857 to 1862, at which time the Indian massacre in Minnesota, and the threatening attitude of the Indians in Dakota, compelled the settlers to leave, and the Sioux Valley remained deserted from that time until 1865, when the whites again took possession under protection of United States troops that guarded the settlement until 1869.

30. The Settlement of Yankton.—Yankton and Yankton County are a nucleus around which is gathered much of the early history of Southeastern Dakota. For over twenty years Yankton was the capital of the Territory, and its best known and most important

place. Yankton was the pioneer settlement of the Missouri Valley, Vermillion being a close competitor and early rival. In 1858 a trading post was established at Yankton by the agents of Frost, Todd & Co., who had obtained a license to trade with the Indians. In the same year the company established a trading post at Vermillion. In 1859 the first white families settled in the counties of Yankton, Clay, and Union. The town site of Yankton was surveyed and established this year by the Upper Missouri Land Company, consisting of J. B. S. Todd, afterwards prominent in the politics of the Territory, A. W. Hubbard, and Enos Stutsman. One of the early settlers, well known in this early history, was Charles F. Picott, a half-breed, born in Dakota in 1830. He was granted 640 acres of land, covering a part of the site of Yankton, by the treaty of 1858, in compensation for valuable services as guide and interpreter. During the Indian outbreak that began in 1862, Yankton was a place of refuge for the Dakota settlers in the more exposed parts. Strong fortifications were erected, and a militia company organized. These precautions and the friendship of the Yankton band of Indians saved the place from attack. Only a few of the Dakota settlers perished at the hands of the Indians during this time of Indian warfare, but the massacres in Minnesota had inaugurated a reign of terror.

31. Early Settlements in Southeastern Dakota.—From a trading post in 1859, Vermillion rapidly came to be a prosperous settlement, ranking in 1860 as the second town in importance in the Territory. The first school-house ever built in the Territory was

erected at Vermillion in 1864. It was built of logs taken from the "timber" on the banks of the Missouri, and its exact location is still pointed out.* The first school in this house was taught by Amos F. Shaw in the winter of 1864-5. The three aspirants for the honor of being capital, in 1860-1, were, in the order of their size and importance, Sioux Falls, Vermillion, and Yankton. Elk Point and Bon Homme were two other early settlements on the Missouri, the former dating from 1859 and the latter from 1858. Bon Homme was settled by a colony from Mankato, Minnesota, immediately after the consummation of the treaty with the Indians in 1858. It prospered as an early settlement, but its site is marked now by only a country store and a few scattered residences.

32. Exploration and Settlement of the Black Hills.—It was not until 1877 that the region of the Black Hills was formally opened for settlement to the whites. The first regularly organized military and scientific expedition to the Hills was under the command of Lieut. Geo. K. Warren in 1857, and was accompanied by Dr. F. V. Hayden as geologist and naturalist. A very good map of this section was made, which became the basis for all future surveys, but no discovery of gold was made and little definite information obtained. In 1874 Lieut.-Colonel Geo. A. Custer (killed in 1876 in the massacre on the Little Big Horn River in Montana) led an exploring party to the Hills, and reached the site of Custer City. N. H. Winchell accompanied the expedition as geologist. The next year settlers flocked to this section, and towns began to be established. Custer City was laid

* See Appendix, page 332a.

out in 1875. An attempt was made to prevent, by military force, the operations of miners and settlers, since the territory by right yet belonged to the Indians, but the attempt was far from being successful. The whole section was settled with wonderful rapidity, and before the conclusion of the treaty of 1887 most of the towns important in its later history were laid out, and settlers were comfortably established. Deadwood, the business capital of the Hills, sprang up from the activity in settlement which marked the year 1876. It owes its growth and prosperity to rich placer and quartz mines in its immediate vicinity. The name originated from the large amount of dead or dry timber which the miners found in the gulches. Lead City, named from the great gold lead of the quartz formation upon which the town is located, is the second place of commercial importance in the Hills. Its preliminary survey was made in 1876. It is near this city that the great Homestake Mine is located, the greatest gold mine in the world. The mine was purchased by its present owners in 1877, and by its development has come to yield an immense profit, and has made the city. Other towns of the Hills that were the product of the activity of the year 1876 are Rapid City, Hill City, Spearfish, Central City, Sturgis, and some others of less importance.

33. Provisional or "Squatter" Government.—In 1858, when the eastern half of Minnesota Territory, having its western boundary on the Missouri River, was admitted as a State, the settlers of Eastern Dakota were left without organized government, in a

territory without legal name or recognition by the National Government. Under these circumstances the settlers were cut off from political rights, and if they were to have law and order it must come from their voluntary action. The political instinct of the American citizen here asserted itself, and for two years the settlers of the valleys of the Missouri and the Sioux elected "squatter" legislatures and "squatter" governors. The first of these provisional legislatures was elected in 1858, printed notices of the election having been sent out by the authority of a "mass convention of the people of Dakota Territory," held in Sioux Falls. The session lasted but a few days, and the principal business done was to memorialize Congress for the organization of a new Territory, and to elect a governor and a delegate to Congress. Another provisional legislature assembled in 1859, and again petitioned Congress for the organization of a Territory. This incident in the early settlement of Dakota shows the character of the settlers, who, left without legal organization, without law, and destitute of the machinery of government, thus met the emergency of the times, preserved order, effected a provisional political organization, and protected all rights. This instinct for political order is an inheritance from the Anglo-Saxon.

34. The Movement of Population.—The lines of settlement have moved across our country from east to west, practically upon parallels of latitude. The New England people and those from the North Central States have moved westward and preserved their latitude, so that South Dakota, in line with New England,

New York, Northern Ohio, Indiana, Illinois, Southern Wisconsin, and Northern Iowa, was settled by people from these States, who brought with them the political ideas and sentiments, the usages and customs of their earlier homes. It is from New York and Ohio that we have taken the models of our laws, while the basis of our local institutions and usages of government is essentially that of New England. This will more fully appear in the study of the civil government of the State.

35. Character of the Settlers.—It was not the well-to-do resident of the Eastern States that came to settle in the Dakota of early days; neither was it the idle and the vicious. The early settlers of native American descent were composed largely of three classes, viz.: (1) Those who had been unfortunate in business and desired to find a new country in which to make another start in life; (2) Young men whom the conservatism of well-settled lines of business in the older communities rendered impatient, and who sought in the New West a better opportunity to make a beginning in life; and (3) Soldiers who came West at the close of the Civil War to avail themselves of the homestead privileges offered them by the Government. Added to these classes there was a large body of foreign immigrants, who, across the sea, had heard of these fertile acres, and came to have a part in the development of the New Northwest. These latter, with more or less ease, adapted themselves to the institutions and imbibed the sentiments of the native-born American settlers. In these beginnings of our population may be traced the basis of that buoyant,

hopeful, and energetic disposition which characterizes the people of Dakota—people who have achieved marked success in the development of a new commonwealth. And what is true of Dakota is largely true of other portions of the Northwest.

36. Frontier Life.—The early settlements of Dakota had all the characteristics of frontier life. Coming, as many of the settlers did, from the comfort and safety of the East, still they cheerfully took up the burdens of the new life and bore its hardships without complaint; but the early advent of railroads soon brought the conveniences and luxuries of older societies, and the period of frontier life was shortened in the Dakotas. True it is that in some parts of the State “sod shanties” are not far in the past, but frequently these sod shanties sheltered refinement and comfort. Very much of the pioneering of Dakota was done in the wake of the railroad, and thus we have witnessed here a wonderfully rapid growth, and conditions have been far removed from those known to the pioneer in the older States. But the poverty of the country is not the poverty of the city, and the poverty of pioneer life is not to be classed as poverty in its effects upon character. From the hard conditions of pioneer life have come some of America’s greatest men. It is a life that develops courage and energy, and reveals strength of character. “The poverty of the frontier, where all are engaged in a common struggle, and where a common sympathy and hearty co-operation lighten the burdens of each, is a very different poverty, different in kind, different in influence and effect, from that conscious and humili-

ating indigence which is every day forced to contrast itself with neighboring wealth, upon which it feels a sense of grinding dependence. The proverty of the frontier is, indeed, no poverty. It is but the beginning of wealth, and has boundless possibilities always opening before it.' '*

* James G. Blaine.

NOTE—Unity of treatment made it desirable to include in this chapter some matter relative to settlement that, chronologically, does not belong in the Pre-Territorial Period.

CHAPTER V

DAKOTA AS A TERRITORY

37. Organization of the Territory.—The question of giving Dakota a Territorial organization came at a time when Congress was absorbed with the issues and complications that led to the Civil War. The demand of the Republican members of Congress, that the act should contain a clause forbidding the taking of slaves into the Territory, delayed the passage of the law until after the retirement of the Southern members, just prior to the inauguration of President Lincoln. The Organic Act, or law organizing the Territory of Dakota, was signed by President Buchanan March 2, 1861. In June following, President Lincoln appointed the necessary Territorial officers.

38. The Organic Act.—A Territory has no constitution, the place of one being taken by the law of Congress authorizing its organization and prescribing its form of government. The first organic act ever passed for such a purpose in the history of the country was in 1787, and is known as the Ordinance of 1787. It was enacted by the Congress of the Confederation, and provided a plan of government for the territory now known as the Old Northwest, and for its division into parts and the admission of the parts into the Union as independent States.* The early organic acts establishing Territories vested the legislative

* B. A. Hinsdale, *The Old Northwest*, Chaps. XV., XVI., XVII., and *The American Government*, Chap. XLI.

power at first in the governor and the judges, and afterwards in a legislature. The later acts vested it in an elective legislature from the beginning. The Organic Act for Dakota was, in general, identical with those of other Western Territories. It contained the general provision of two sections of public land in every township for school purposes, which gave Dakota a total of over 5,000,000 acres of school lands. A peculiar provision of the act was found in the requirement that "the river in said Territory heretofore known as the 'River aux Jacques,' or 'James River,' shall hereafter be called the Dakota River." This attempt to legislate upon the name of a river was far from being successful, as present usage testifies. We learn something of the primitive conditions of travel in the West at the time when Dakota became a Territory, from the fact that it required eleven days for the news of the passage of the Organic Act to reach Yankton.

39. Boundaries and Area.—Dakota originally included territory that is now found in five States, viz., portions of Idaho, Wyoming, Montana, and all of the two Dakotas. The boundary lines were as follows: Starting in the channel of the Red River of the North where it is crossed by the forty-ninth parallel of north latitude, the line follows this river to Big Stone Lake; thence along the western boundaries of Minnesota and Iowa to the point where the Big Sioux intersects the Missouri; thence north along the channel of the Missouri to the mouth of the Niobrara; thence up the Niobrara and Keya Paha Rivers to the forty-third parallel of north latitude; thence west to the eastern

boundary of Washington; thence north to the forty-ninth parallel, and thence east to the point of beginning. The Territory thus organized included an area of over 350,000 square miles, and was nearly as large as the combined areas of France and Spain. By 1873, the parts of Montana, Wyoming, and Idaho included in Dakota were cut off, and the western boundary of the Territory was placed at $104^{\circ} 5'$ longitude west from Greenwich, the present boundary of the two Dakotas. In 1882, the forty-third parallel of latitude was made the southern boundary to the point where it intersects the Missouri, and the territory south of this line and north of the Niobrara and Keya Peha Rivers was added to Nebraska. The area of Dakota in its final form was 150,932 square miles, its extreme length north and south being about 430 miles, and the breadth east and west about 385 miles.

40. General Character of the Territorial Government.—Territorial government is peculiar in form, having considerably less local authority than is conferred by Statehood. This form of local government is peculiar to American institutions, and it was, perhaps, unconsciously patterned after the Thirteen English Colonies, where the power of local legislation was usually granted, but the executive authority was held under the control of the home government. The Territorial government of Dakota conformed to the general plan applied to other Territories. The governor, secretary, chief-justice and associate justices, United States attorney, and surveyor-general were appointed by the President, and their salaries were paid by the National Government. The general features of the

Territorial organization were completed by the selection of a delegate to Congress, elected by the qualified voters of the Territory for a term of two years. He had a right to a seat in the National House of Representatives and could participate in the discussions, but could not vote.

41. The Legislature.—The legislative power was vested in two houses, the Council and House of Representatives, the former having, prior to 1884, not less than 9 or more than 13 members, and the latter not less than 13 or more than 26 members. Later this was changed, so that the membership of the Council was 24 and that of the House 48. The members of the legislature were elected like those of a State legislature. The scope of legislation in a Territory is nearly as wide as that of a State. The members of the Dakota Territorial legislature were paid \$4.00 per day during the session, and the session was limited at first to forty, and later to sixty days.

42. The Judiciary.—The judiciary of Dakota was vested in a series of courts, partly Federal and partly local in character. The Territorial courts were a supreme court, a district court, probate courts, and justice's courts. The probate and justice's courts were entirely local in character, and resembled the corresponding courts of our State. The supreme court and the several district courts were presided over by the judges appointed by the President. At first there were a chief justice and two associate justices, but the number was later increased to five associates, as the Territory became more populous. Any two of these judges could hold a session of the supreme court,

while the district courts were held by them individually. The Territorial judicature reminds us of the Federal courts of the Nation, in the relations of the Supreme and Circuit courts.

43. Territorial Officers.—The first Governor of Dakota was William Jaynes, of Springfield, Illinois. He and his fellow officials did not arrive in the Territory until May 27, 1861, and it is at this date that the civil history of the Dakotas begins. In the twenty-eight years of Territorial history there were ten governors; the last one was A. C. Mellette, appointed by President Harrison in 1889, his term being less than a year, since Dakota was admitted as a State in November of that year. The chief justices of the Territory were, successively, Philemon Bliss, Asa Bartlett, Geo. W. French, Peter C. Shannon, A. J. Edgerton, and Bartlett Tripp.

44. The First Legislature.—The first legislature convened at Yankton in March, 1862, and continued in session until May 15. It passed 91 general laws, 25 private laws, and 21 memorials to Congress. The Council consisted of 9 members and the House of 13. Some of the acts are of especial interest. One act incorporated The Old Settlers' Historical Association; another established the Territorial penitentiary at Bon Homme; another located the seat of government at Yankton; a fourth located the Territorial University at Vermillion. A series of acts established the early counties of the Territory; civil and criminal codes were enacted; and, in general, the loose ends of civil life, which two years of disorganization had produced, were gathered up, and that degree of law and

order established which would meet the contingencies of pioneer life.

45. Periods of Territorial History.—The twenty-eight years of Territorial life may be divided into three periods, viz.: (1) The Early Period, from 1861 to 1872; (2) The Middle Period, from 1872 to 1880; and (3) The Later Period, from 1880 to 1889. Each of these periods is characterized by peculiar conditions and distinct tendencies. During the first period, the Territory was without railroads, and this fact, together with the Indian troubles, delayed settlement and growth. The second period was marked by the advent of railroads, peaceful relations with the Indians, and a constantly expanding settlement and growth. The third period was marked by activity in railroad building, the rapid settlement of remote portions of the Territory, and the growth, in the older settled portions, of large and prosperous towns. It was a period of remarkable growth and development.

46. The Early Period.—The settlement of Dakota during the early period of Territorial life was accomplished under many difficulties. The Indian troubles from 1862 to 1868 actually drove many settlers out of the country and materially limited immigration. The population at the time the Territory was organized was about 2,000; in 1868 it was estimated at 12,000, while in 1870 it was only 14,182. In 1868 the Sioux were located upon the reservation west of the Missouri known as the Big Reservation. From this time on there was no particular danger of Indian depredations, and Indian difficulties practically disappear from Dakota history. But the greatest check upon rapid

settlement in this period was the utter lack of railroads. Thus we find that until 1872 the streams of settlement had only followed the Missouri, the James, and the Big Sioux valleys, in the southern part of the Territory, while in the north there was little done in the way of settlement outside of the immediate valley of the Red River. In 1870 the first telegraph line was built into the Territory—from Sioux City to Yankton. The first public land entry in what is now North Dakota was made in 1871.

In 1865 Congress appropriated \$85,000 for the opening of wagon roads through the Territory towards the Rocky Mountain gold fields. One road was constructed from Niobrara to Virginia City; another from Sioux City up the valley of the Missouri to the mouth of the Cheyenne River; and a third from the Minnesota line to Cheyenne, Wyoming, to intersect the road to Virginia City west of the Black Hills. The construction of these roads undoubtedly gave an impetus to immigration and guided settlers further into the country than they otherwise would have gone in the early period.

47. The Middle Period.—Dakota could hardly have been settled in half a century without railroads. The period of active settlement and prosperous growth dates from the building of railroads across the plains and along the valleys. The northern part of the Territory could have been but little more than an immense cattle range without this aid; likewise, a large part of the southern portion could never have been settled without these pioneers, while the richer portions along the rivers, although aided by river transporta-

tion, must have gone through a long period of slow growth and toilsome progress without the iron highways, which established close relations with the great commercial centers of the East. The first railroad track laid in Dakota was that of the Northern Pacific, which, coming from the East, reached Fargo January 1, 1872. The same year the Dakota Southern was built west from Sioux City, reaching Yankton in 1873, about the time the Northern Pacific reached Bismarck. The Northern Pacific, the northernmost of the transcontinental lines, was completed in 1883; and its extension across Dakota, with connections east and west, contributed much to hasten the settlement and development of the northern part of the Territory. In 1880 the Territory had a population of 135,177, and a railroad mileage of 689 miles.

48. The Later Period.—During the period of Territorial life from 1880 to 1889 there was rapid growth and development. There was great activity in railroad building. The increase in railroad mileage was significant, growing from 689 miles in 1880 to 4,483 in 1889. Eastern capital was extensively employed for the building of railroads and towns, and for improvements upon the farms of settlers. The farms of the south, the ranches of the west, and the wheat fields of the north were made to yield a wealth of production which attracted the attention of home seekers in this and other countries. The competition of Western farm products with those of the East in Eastern markets attracted attention to the resources of the West, and brought increased immigration. With a constantly increasing immigration came a rapid expan-

sion of industry and business. Here is to be found the "boom" period of Dakota history, when the noisy excitement and extravagant claims of the "boomer" led to investments that proved unwise, causing loss, and somewhat delaying real progress. The influx of settlers was phenomenal. Towns sprang up almost in a day along the lines of railroad as they were pushed into the remote sections. Throughout the entire period there was a steady development of the resources of the Territory, and, in the later years, there came the steadying influence and conservative spirit of well-established industry and prosperous business.

49. Political Life in the Later Period.—It was during this period that the political life of Dakota began to assume larger proportions, and to take on greater activity. In 1883 the capital was removed from Yankton to Bismarck, very much to the discontent of the people of the southern part of the Territory, who constituted a majority of the population. The removal of the capital served to arouse a strong sentiment in favor of the division of the Territory. Perhaps the dominant issue in the southern part from 1883 until admission as a State in 1889 was the question of division and admission, and around this gathered much of the political life and sentiment of the time. As settlement advanced, township and county organization was effected. Usually the first form of political organization was the county, the township following later. When the period of Statehood opened, many counties had no township organizations, the business of local government being centered in the county. The school district sometimes appeared before the township, and

was thus one of the earliest forms of political organization for local government. Public schools, colleges, and private schools were founded during this period. In general, society became organized, and definite lines of development and growth appeared which mark the change from pioneer conditions to those of a stable and better organized type of social and political life.

50. Railroads of the Territory.—As has been said, the railroads were the pioneers in the settlement and development of Dakota. Without their aid its development would have been very much delayed. Three systems of railroads played an important part in the eastern half of the Territory in its early history. They were the Northern Pacific, the Chicago, Milwaukee & St. Paul, and the Chicago & North-western.

51. The Northern Pacific System.—The Northern Pacific crossed the Territory in the north, and afforded an outlet to a large area of very fertile country. The charter for the organization of a company to construct the Northern Pacific was granted by Congress in 1864, the proposed line to run from Lake Superior to Puget Sound, with a branch to Portland, Oregon, a total distance of about 2,000 miles. After many discouragements and reverses, the road was completed in 1883; the failure, in 1873, of the great banking house of Jay Cooke & Co., which had fathered the gigantic enterprise, nearly worked the defeat of the project. This great transcontinental route has been, and now is, one of the great arteries of commerce for the Northwest; it is a National highway, which alone has brought whole States into touch with industry and

civilization, where else the Indian would have roamed in the idleness of his natural state. The fanciful theory was advanced that the building of this road through the mountains to the Pacific would open up a way for the warm winds of the Japan current to reach the plains of the interior, and enrich them with a tropical climate; but, while no such climatic change has occurred, the great region whose annual product this road carries to market—the mountains, the forests, and the fertile valleys and plains through which it passes—have yielded a wealth of fabulous amount,—a wealth that has built cities, made States, and enriched the Nation.

52. Railroads of the Eastern Section.—The other systems of railroad that were important to the Territory belong mainly to the southern part, and extend as far westward as the Missouri River. The Chicago, Milwaukee & St. Paul system is interlaced through the eastern part of South Dakota with the Chicago & Northwestern, the former reaching the river at Chamberlain, and the latter at Pierre; whence they will probably ultimately be built to the Black Hills, and thus unite the eastern and western parts of the State, an event of great importance to its future development.

53. Railroads of the Black Hills.—In the western part of the Dakotas, railroads were important in settlement and development, but the mileage was very limited, and confined entirely to the region of the Black Hills. Prior to Statehood, two roads had entered the Hills, viz., the Fremont, Elkhorn & Missouri Valley road, and the Burlington & Missouri River line. The total mileage of these roads in

Dakota up to 1889 did not exceed 250 miles ; but they were of the greatest importance to the Black Hills country, in that they gave it connection with outside markets, and made shipment of the rich ores of that section possible.

54. Commerce and Industry of the Territory.

—Agriculture, including stock-raising, was the main occupation during Territorial days, although in the later period, from 1880, the mining industry was important. In the eastern and northern parts, flouring mills early appeared, and this form of manufacturing has steadily increased in importance. In the southeastern part, the presence of clay suitable for brick-making led to a local development of this industry. In the Black Hills, the most important source of wealth was the mines, although the rich valleys and fertile plains surrounding the Hills made agriculture a profitable industry, while the stock-raising of the western plains began to assume importance in late Territorial days. The northeastern part became noted for the fine quality of wheat grown, and the large wheat farms of the Red River Valley have become known the world over, their products commanding the highest price in the markets.

55. Education in the Territory.—From the first, the people of Dakota showed themselves favorable to schools. Several institutions of higher learning were early founded, and common schools spread throughout the rural districts as fast as population thickened and townships were organized. As previously remarked, in some instances the school district preceded the township. Both the district and the township sys-

tems of rural school organization were in vogue during Territorial days, and, although a vigorous contest was waged to unify the system, there was bequeathed to the State a mixed system of school organization. The University of South Dakota was established by Territorial legislation in 1862, and its first building was erected in 1882. A second University, the University of North Dakota, was established at Grand Forks in 1883, and its buildings were erected the same year. Two normal schools were established by act of the legislature in 1881, one at Spearfish, and one at Madison. The School of Mines, located at Rapid City, has been important as a technical school; while the Agricultural College, located at Brookings, has been important as an industrial school. By the close of the Territorial period, the annual expenditure of Dakota for educational purposes had reached nearly \$2,000,000, exceeding most of the Southern and some of the Northern States. In 1885, the Territory stood No. 17 among the States and Territories for the amount of money expended for education. In addition to the system of public schools, the various religious denominations had established a number of institutions of higher education prior to the close of Territorial days.

56. Character of Population.—Dakota received a large number of immigrants from foreign countries during the days of settlement and the later period of Territorial growth. Her citizens of native descent came mainly from (1) other Western States, (2) the North Central States, and (3) New England. The foreign element in her citizenship is mainly comprised

in the following classes: Scandinavians, Germans, German-Russians, Bohemians, and Irish. Mennonites settled in Yankton and Bon Homme and one or two other counties, and live in communistic colonies, owning everything as a society, and managing all their affairs in common. "The leading features of the Mennonite bodies have been baptism on professsion of faith, refusal of oaths, of civic office, and of support for the State in war, and a tendency to asceticism."*

* Century Dictionary.

CHAPTER VI

ADMISSION TO THE UNION, AND STATE HISTORY

57. The Movement for Division and Admission.

—The question of division was mooted early in the history of the Territory. In 1871 a memorial was addressed to Congress by a unanimous vote of the legislature, asking for a division on the forty-sixth parallel. Similar memorials were addressed to Congress in 1872, 1874, and 1877. In 1879 the legislature changed its attitude to one of protest against admission as one State, and in 1881 a memorial was sent to Washington asking for a division into three States. From 1880 to 1883 there was a very large volume of emigration into Dakota, and from this time dates a well-defined movement for division and admission. The removal of the capital in 1883 from Yankton, together with the defeat, in the Territorial legislature, of a bill authorizing a constitutional convention, served thoroughly to arouse the people of the southern part of the Territory on the subject. In the summer of 1883, on popular initiative, there assembled at Huron a convention to consider "the advisability of calling a constitutional convention." It consisted of 188 delegates from thirty-four counties in the southern part of the Territory, and this convention resolved that division on the forty-sixth parallel "was the fixed and unalterable will of the people." The convention adopted an address to the

people, appointed an executive committee, with Ex-Governor Edmunds as its chairman, and issued a call for a constitutional convention to meet at Sioux Falls, September 5, of that year.

58. The First Constitutional Convention.—At the appointed time, in obedience to the call, 150 delegates assembled at Sioux Falls in the capacity of a constitutional convention. Bartlett Tripp, of Yankton, was made the chairman. The convention was in session fourteen days, and agreed upon a constitution. This constitution was submitted to the people in November, at the time of the regular election, and was adopted by a vote of 12,356 to 6,814 in forty-two counties of the Territory. It came to nothing.

59. The Second Constitutional Convention.—The legislature of 1885 enacted a law providing for a constitutional convention for South Dakota preparatory to its admission, which was believed to be near at hand. The convention, consisting of 112 delegates, met at Sioux Falls, September 8, 1885, and was called to order by J. H. Teller, Secretary of the Territory. A. J. Edgerton, of Sioux Falls, was elected president of the convention. After a sixteen days' session the convention adjourned, having formulated a constitution. This constitution, which was widely published, became known as the "Sioux Falls Constitution," and was afterwards the model for the present State constitution. In November the constitution was submitted to a popular vote, and at the same election a full ticket of State and legislative officers was elected. A. C. Mellette, of Coddington County, was elected provisional governor.

60. A Provisional State Government.—A peculiar question here arose. Could a Territory voluntarily, of its own motion, throw off its Territorial form of government and assume the form and powers of a State? The question was argued in the press and on the "stump." There were many who held that the authorization of Congress was not necessary in order that a Territory might become a State, but that, when it presented itself to Congress with the organization and the character of a State, it must be admitted. This radical and extreme doctrine did not prevail, and the less revolutionary course of agitation and appeal was followed. However, the provisional legislature met at Huron on the second Monday of December, 1885, and proceeded to effect an organization. It listened to Governor Mellette's message, and elected two United States Senators, but adjourned, after some discussion, to await the action of Congress. It was confidently believed that Congress would admit South Dakota and recognize the constitution and State officers already provided. But the people of the southern part of the Territory, now numbering from 250,000 to 300,000, were doomed to another disappointment, for Statehood was yet several years distant. The spirit exhibited by the people at this time is characteristic of the active, but conservative and law-abiding, Anglo-Saxon American citizen.

61. Significance of Statehood.—The distinction between a State and a Territory does not pertain merely to forms of local government and relations sustained to the National Government; there are social and industrial, as well as political differences, which

distinguish one from the other. Statehood implies a settled condition of society, a well-integrated and intelligent population, and a degree of development in business and industry. The two Dakotas, in 1889, when they became States, reasonably fulfilled these conditions. In the character of her population as regards intelligence and morals, in the number of her citizens, in the expansion of her industries, in railroad mileage, in the prosperous and hopeful outlook for the future, South Dakota possessed all the conditions requisite for a successful career as a State.

62. The Enabling Act for Dakota.—The admission of new States into the Union is entirely in the power of Congress. It establishes the boundaries, fixes the time of admission, and determines the manner and requirements of it. The act authorizing a body of people occupying a common territory to form a State constitution and frame a State government, is known as an Enabling Act. The Enabling Act for the Dakotas also applied to Montana and Washington, and was known at the time as the "Omnibus Bill," because it thus grouped into one the various measures that had been proposed for the admission of these States. We are interested only in the terms of this act that apply to South Dakota. It required that, at the time of the election of delegates to the constitutional convention, a vote should be again taken upon the Sioux Falls Constitution, and, if this was supported by a majority it was to become the basis of the permanent constitution. This constitution received a majority of the votes, and it only remained for the convention to make the amendments

required in order to conform to the details of the Enabling Act.

63. The Constitutional Convention of **1889**.—The third and last constitutional convention for South Dakota convened in Sioux Falls, July 4, 1889. The convention was made up of 76 delegates. Judge A. J. Edgerton was unanimously chosen president. The convention remained in session thirty-two days, and its work was to amend the Sioux Falls Constitution of 1885, in compliance with the requirements of the Enabling Act. Two supplemental articles were submitted with the constitution for adoption or rejection upon a special vote. One of these provided for the prohibition of the manufacture and sale of intoxicants; the other was a proposition to adopt the principle of minority representation in electing the legislature of the State. This latter was a plan whereby a voter would be at liberty to cast as many votes for one candidate for representative as there were candidates to be elected, or make any other distribution of his total vote for representative. The purpose of this was to give the minority party a chance to secure representation in the House of Representatives. The article for prohibition was ratified, but was repealed in 1897. The proposition for minority representation failed to receive a majority of the votes. The constitution thus formed was submitted to a popular vote, October 1, 1889, and received 66,411 votes, while only 3,247 were cast against it. Pierre was chosen as the temporary capital, and then the permanent capital the following year. Huron was the other contestant for the honor.

64. Compact with the United States.—The Enabling Act required that the constitution should be republican in form, and “make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.” In addition to these general terms, it was also required that the constitution should contain the following provisions, irrevocable without the consent of the United States and the people of the State:

First—“That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.”

Second—This article of the compact required (1) that the State should forever disclaim all right and title to unappropriated public lands within its borders; (2) That United States public lands should not be taxed by the State; (3) That lands belonging to a citizen of the United States residing outside of the State should not be taxed higher than the lands of citizens of the State.

Third—“That the debts and liabilities of the Territory shall be assumed and paid by the State.”

Fourth—“That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of the State, and free from sectarian control.”

The terms of this compact illustrate in part the peculiar relations that exist between a State and the Nation. It is by these and similar provisions that our

National Government becomes a federation instead of a confederation. We can scarcely think of a sovereign State hampered by restrictions like these.

65. Character of the Constitution.—The constitution as submitted contained twenty-six articles, and embraced many of the details of State organization. It contained a Bill of Rights of twenty-seven sections. There are two theories of constitution-making, one of which is illustrated by this constitution. The older plan of a State constitution was to embody in it the bare outlines of State governmental machinery, including only the most general principles. The other theory, of later conception and practice, is to embody in a constitution certain forms of legislation that are supposed to be of a permanent character. In the latter plan, the duties of officers are minutely described, county courts and county and township organization are provided for, and very little of the regular organization of government is left to the ordinary course of legislation. The constitution of South Dakota corresponds to the second type. Opinions differ as to the wisdom of the course. Governor Mellette said before the constitutional convention of North Dakota: "If you know the proper things to embrace in a constitution, the more there is in it the better. One of the greatest evils is excessive legislation—the constant change of laws every two years, and the squabbles and debates over the different questions that constantly arise." Judge T. M. Cooley, of Michigan, who also addressed the convention of North Dakota, said: "Do not, in your constitution-making, legislate too much. Leave something for the legislature. You

have to trust somebody in the future, and it is right and proper that each department of the government should be trusted to perform its legitimate functions." The constitutions of both North and South Dakota contain much that is strictly legislative in character.

66. First Session of the State Legislature.—The proclamation by which South Dakota became a State was issued by President Harrison, November 2, 1889, but the first Legislature met under the terms of the Enabling Act, October 15, and organized and elected two United States Senators. The Senators chosen were F. R. Pettigrew and G. C. Moody. The Representatives that had been elected were O. S. Gifford and J. A. Pickler. After electing Senators, the Legislature adjourned to meet on the first Tuesday after the first Monday in January, 1890.

67. Religious Influence and Church Development.—Religious influences have been characteristic of Dakota at all periods of its growth. Catholics and Protestants came into the Territory at an early day, not only for the purpose of active religious work, but for the further purpose of securing a foothold for their various organizations, and thus preempting the field. Thus, it was not uncommon during Territorial days to find a small town of a few hundred inhabitants with five or six church organizations. This state of things is still to be found in some parts of the State. As population thickened, church organizations grew and multiplied. The Methodists are credited with being the first religious body to begin work in South Dakota, excepting missionary work among the Indians. The work of the Methodists was begun at Vermillion in

1860. The Presbyterians were the first to organize in North Dakota, at Fargo, in 1871. Bishop Marty, of the Catholic Church, as Vicar Apostolic, came to Dakota in 1880 and organized a bishopric, the independent work of several priests having effected several Catholic organizations prior to this date.* From this small beginning there was rapid growth, until, at the time of Statehood, the bishoprics of North and South Dakota were established. By this time nearly all the Protestant denominations were represented in South Dakota, and, together with the Catholics, they had established churches in every city, town, and hamlet. In the more thickly settled portions of the State, religious organizations have built churches in many rural districts, which may, in the future, become new centers of population.

68. Church Schools.—Many religious bodies have established schools and colleges, and are maintaining them with success. The Presbyterians have a college at Pierre and an academy at Scotland. The Baptists maintain an institution of collegiate rank at Sioux Falls. The Methodists have colleges at Mitchell and Hot Springs. The Episcopalians have a school at Sioux Falls. The Norwegian Lutherans maintain Augustana College at Canton and a Normal School at Sioux Falls. The Congregationalists have colleges at Yankton and Redfield, and an academy in Charles Mix County. The Catholics have schools of academic grade at Sioux Falls, Deadwood, and Aberdeen. While their schools at Vermillion, Sturgis, and Mitchell are parochial in character, they also maintain academic

* *Official Statistics of Commissioner of Immigration for 1889.*

courses. They also have a large number of parochial schools in the more important cities and towns of the State. Various Protestant denominations, as well as the Catholics, have established and now maintain mission schools among the Indians. The latter have six such schools in the State at present (1898).

69. The State and Education.—The public school system of the State is liberally endowed by the grant of two sections of land in every township. Some of this has been sold, and the remainder is leased by the State, so that already a considerable fund has accumulated, the income of which is being used for the benefit of the common schools. The State institutions of higher education have received liberal endowments of public lands, but this has not yet become available, and these institutions are supported by direct taxation. The State University is located at Vermillion, and receives a generous patronage. The Legislature of 1901 authorized a law school in connection with the University. A medical school has not yet been established. The Agricultural College located at Brookings, is not only of educational value but also of practical utility for the farming industry. The State has four Normal Schools, located respectively at Madison, Spearfish, Springfield, and Aberdeen, the latter established by the Legislature of 1901. The State also maintains a School for Deaf Mutes at Sioux Falls, while the Reform School at Plankinton is to be regarded as educational to a degree. The education of the blind is provided for by the Asylum for the Blind at Gary, established in 1895. Grants of public lands constitute the endowment of the educational institutions of the State.

70. The First Decade of State History.—We are now (1898) well toward the close of the first decade of State history. The limits of our space will not permit us, and neither would it be profitable for us, to enter into the minutiae of this period. The industrial progress of the State has been along the lines of the previous Territorial development, with very few exceptions. The opening of the Reservation

west of the Missouri, in 1889, brought that table-land region into use as a stock-raising district. The mining industry of the Black Hills has had a steady growth, and the mineral resources of this region have attracted wide attention. In the eastern and northern parts of the State, the agricultural industry has much enlarged, and a more varied line of



GOV. MELLETTTE.

products is now obtained than formerly. In the southeastern part much corn is raised, and the fattening of hogs and cattle for market has become almost a special industry. A movement is now on foot to test the soil of the State as to its adaptability for raising the sugar beet, and there seems little question as to the possibility of developing this industry. Population has not increased as rapidly as at some periods of Territorial life. The

census of 1890 gave the State a total population of 328,808. In 1895 the population was estimated at 390,000. More settled conditions of society prevail as the years go by, and the spirit of business conservatism has strengthened during the first decade of State life. Education has advanced; city schools have enlarged and improved their buildings and equipment; colleges have strengthened and developed; the State institutions of education have improved their standards of scholarship, and increased their enrollment of students for the higher lines of work; the standard of teaching in the public schools has been raised, and the real culture and refinement of the people have increased as prosperity has advanced. The extension and strengthening of church influence has been as marked in this period as the development of education, and thus the home, the church, and the school are laying the foundation for the future greatness of our commonwealth.



PART II

ORIGIN AND DEVELOPMENT OF OUR CIVIL INSTITUTIONS

CHAPTER VII

DEFINITIONS AND GENERAL PRINCIPLES.*

71. Society.—Society consists of human beings living together in such relations that one is, to a greater or less degree, dependent upon the other. Only in this relation can men exist as civilized beings. Not even the savage can live entirely alone, without intercourse with his fellows. No individual is capable of supplying all his wants as a member of society. He must look to others for many of his daily necessities. The food he eats, the clothes he wears, the tools he uses, are to be obtained only by the aid and assistance of others.

72. Rights.—In society the individual man cannot do as he pleases. A man living alone would have neither rights nor duties; but as soon as several persons are gathered together in society, each must give up something for the good of the whole, and each is under obligation to do certain things for the common interest. Thus arise common rights and common

* See B. A. Hinsdale, *The American Government (Introduction)*.

duties. Common rights are generally divided into a number of classes. Some of them arise from man's nature, and hence are called natural rights. The most important of these are: (*a*) the right to personal security, *i.e.*, the right to be undisturbed in person and reputation; (*b*) the right of personal liberty, or the right to come and go without restraint; (*c*) the right of freedom of speech, including the right to publish whatever one pleases, so long as others are not injured thereby; (*d*) the right to assemble for any lawful purpose to petition the legally constituted authorities; (*e*) the right to freedom from unreasonable search and seizure; (*f*) the right of private property, that is, the right to use and dispose of anything one can call his own, including time and labor; and (*g*) the right of religious liberty, or the right to worship in such a way and to hold such religious opinions as one may choose, or none at all. These rights are, of course, limited by the interests of society at large, which feels itself authorized to sacrifice any or all of them in times of danger. Society is, however, under obligation to compensate the individual, as far as possible, for the losses arising from the violation of such rights.

73. The State.—It is important to keep in mind the difference between society, the state, and the government. Society is composed merely of the individuals who may be associated together, without regard to their union or organization. It is the whole mass, unorganized and disunited, each one seeking his own interests, without regard to the wants and wishes of others. The state, on the other hand, is the same

body of individuals united into a compact mass, and endowed with power to carry out the collective will. It is the whole body of people in their organized capacity. The government is the agency by which this will is executed. It consists of persons selected for this purpose, and entrusted with the necessary power and authority. The state is a body politic, since it expresses the will of the citizens; it is a body corporate, since it can thus act as a single individual.

74. Government.—Society, as it has always existed, needs regulation and control. Men are selfish, and not sufficiently instructed in their duties towards others. They are not sufficiently aware of the binding nature of these duties, and the strong take advantage of the weak, and use their own wealth and power to the disadvantage of the less fortunate. To prevent this, government comes into being, to regulate and control society in the interests of the whole. It is the instrument of society to execute the collective will of the whole body. Government is the means by which personal rights are secured and the administration of justice effected.

75. Co-operation.—In society, many things must be done that the individual could not accomplish alone. Roads and bridges must be built and kept in repair, schools be established and maintained, and provision made for those who, unaided, cannot obtain for themselves the necessities of life. In cities, streets must be paved, protection against fire secured, arrangements made by which the inhabitants can be supplied with pure water, sewers constructed, and many other things done which are of vital interest to all and ob-

tainable only by co-operation. A further office of government, then, is to secure for the individual that which he could not possibly obtain for himself alone. It is to be observed that one of the significant signs of the times is a demand for the extension of this function of government into wider and wider fields. It is worthy of notice that the control of railroads, telegraphs, and other so-called "natural monopolies" is now widely advocated in further extension of this feature of government.

76. Taxation.—These things cannot be done without great labor and expense. It is therefore held that the cost should be borne by the different individuals composing society, according to their means. It is, then, necessary to determine the value of the property held by the various members, and to apportion the part of the expenses to be borne by each. Hence arises the right of taxation, or the right of the government to demand from each person under its jurisdiction such a part of the total expenditures as shall be just and right; but it is a right that should be exercised only in the interests of all. When, as often happens, the right is so exercised as to confer very unequal benefits upon society, it becomes a dangerous form of oppression and tyranny.

77. Authority.—The government must have authority and power to enforce its just demands. This authority is vested in it by the action of society over which it rules, or rather whose wishes it executes. Government must be strong enough to execute its purposes, and to overcome and suppress all resistance on the part of individuals who seek

to avoid doing their part in subserving the common interests.

78. The Nature of Government.—Government is not a “social contract,” since it is imposed on man by his surroundings, his own nature, and the conditions under which he finds himself. Its foundations are believed to lie in the family, and some are inclined to look upon the state as one great family. That the highest interests of society are only to be subserved by some sort of government, is a self-evident fact, and most are willing to admit, with Aristotle, that “man is born to be a citizen.” This is, of course, only another way of saying that man cannot exist and make progress except in society.

79. Different Kinds of Government. — When unchecked authority is lodged in the hands of a single individual, the government is sometimes known as an unlimited monarchy. Such governments exist to-day only in Russia and on the continents of Asia and Africa. When the power of the ruler is limited and defined by law, and others have a share in determining the various questions that arise from time to time in the administration of the affairs of the state, it is known as a limited monarchy. Such are most European governments at the present day. When, however, the authority is exercised directly by the people, who meet and determine public matters, it constitutes a democracy. Such a democracy was found in some of the cities of ancient times, and for a short period in the Colony of Plymouth. When, however, the numbers become so great that it is impossible for all to assemble and consult in regard to public interests,

the people may still execute their will through representatives. The state then becomes a republic, or a representative government. The danger in monarchy is found in its tendency to despotism and the oppression of the people. Democracy, on the other hand, has always shown a tendency towards hasty and ill-considered action, and it too often happens that unprincipled demagogues rather than high-minded statesmen control popular opinion and carry popular elections. Hence, the weakness of democracy has always been disorder and the strife of factions. Democracy is impractical in large states, unless the principles of the initiative and the referendum can be so adapted as to secure a sure expression of the popular will.

80. The Initiative.—The inability of large masses of people to meet and consult in regard to public measures has led to various efforts to secure an expression of the popular will through the ballot-box. The most popular of these are known as the initiative and referendum. Under the first of these the people can formulate any measure and have it submitted to popular vote whenever a certain number of electors, fixed by law, shall petition the government to do so. If, for instance, it were desired to make a change in the mode of taxation, it would first be necessary to secure the requisite number of names to a petition to enable a vote to be had in regard to it.

81. The Referendum.—The referendum merely requires the legislature to submit to the people important measures passed by that body before they

shall take effect. It has been successfully employed in Switzerland for many years.

82. Defects in Republican Form of Government.—The experience of years has shown certain weaknesses in representative government. Chief of these is the difficulty of fixing responsibility. One department or officer seeks to shift this upon another, until it often happens that it is impossible to ascertain who is to blame for the failure to obtain proper legislation or secure a redress of grievances.

83. Centralized and Decentralized Government.—Governments may be divided into two classes in another respect; (1) those in which all the various acts of government proceed from a single center, and (2) those in which these acts proceed from several different centers. The former are said to be centralized, and the latter decentralized governments. France is an example of the former, while our own country is the most conspicuous example of the latter. In France, the mayor of the most remote city or commune in the remotest province may be removed by the government at Paris; while the President of the United States has no more power to interfere with the local affairs of a city in South Dakota than has the Czar of Russia. If the local affairs of the various States were regulated from Washington, our government would be centralized. As it is, our governmental affairs are conducted from various centers, all independent of each other, with powers so regulated that there can be no conflict between them. Each is simply required to conform to the fundamental law, called the constitution, and to the statutes applicable

to each. The units of government are the Nation, the State, the county, the city, the town, the township, and the school district.

84. Dual Government.—In this way our system of dual government has grown up. We are subject to two chief units, the Nation and the State, since the other lesser units are regarded as organs of the State. Such a dual government is sometimes called a federal government. In this case the National Government has control of all matters which are supposed to interest directly the whole country, while matters of a more strictly local nature are left to the control of the State and its subordinate units. In this way matters relating to war and peace, the coinage of money, commerce and foreign relations, the postoffice, etc., are National matters, and are placed in charge of the National Government; while the punishment of most crimes, the maintenance of schools, and the expenditure of money for all local purposes are relegated to the States, and by them may be still further given over to the inferior units. These two governments, then, do not overlap in respect to jurisdiction; the citizen is called upon to obey the National Government in some things, the local government in others, and may therefore be said to be subject to two jurisdictions.

85. The Independence of the State.—While the State Government is subordinate to the National Government in all matters covered by the jurisdiction of the latter, in its own sphere it is absolutely independent. The acts of its legislature and the decisions of its courts cannot be questioned in any way regarding matters coming strictly under their authority, and

not granted by the Constitution to the General Government. The State is not, however, independent, since it is only one of a large number of States like itself, forming a federal union. For this purpose important powers have been granted the General Government, and they are no longer exercised by the States.

86 Three Departments of Government.—It will be seen that the powers of government may be divided into three classes. We have, first, the law-making power; here the representatives of the people act directly for them in this most important governmental capacity, that of determining what the laws shall be; second, the executive department, which secures the execution of the laws, and sees that the will of the people is carried into effect; third, the judicial department, which interprets and expounds the law and secures justice in its execution. In an absolute monarchy, all these powers are centered in one person. In proportion as a nation has progressed towards civil liberty, these powers have been separated until, at the present day, in most states, they are in entirely different hands. In this way one department is made a check upon another, and the absorption of all power by any one is prevented. This is sometimes spoken of as a system of checks and balances.

87. The Constitution.—The National Government and each State has an organic law, known as a constitution. This constitution determines the general form of the government, the various powers of the several departments, the general character of the laws that may be passed, and the manner of their

administration. The constitution is made or adopted by the people themselves, as is the case in South Dakota. The laws are made by the legislature, deriving its authority from the constitution. The adoption of the constitution by the people of each State is an instance of the use of the principle of the referendum. Ordinary laws can be changed by the legislature ; the constitution can be changed only by the people, or in accordance with the manner prescribed by them. The constitution is the most permanent and binding form of law.

88. The Sanctity of the Law.—The importance of good government is seen in the fact that it is one of the essentials of all social progress. No people can make progress under a government unstable, ill-administered, and subject to constant change. Life and property can be secure only in governments where the law is held sacred, and due respect is given to its operation. This does not mean that agitation for the repeal of bad laws is not a duty ; it does mean that, so long as laws remain upon the statute book, they should be enforced. There is, perhaps, no better way of securing a repeal of a bad law than by its rigid and impartial enforcement. At any rate, no influence is more potent for evil in a government like ours than the notion that a law is not to be obeyed unless it is approved. The attempt to overthrow the government by force is made a crime called treason, and punished with death. The failure to enforce law to humor the whim of even a majority, is to weaken the power of all government and to cultivate a spirit of lawlessness that is fatal to all authority.

CHAPTER VIII

THE ORIGIN AND GROWTH OF OUR LOCAL INSTITUTIONS IN GENERAL

89. The Early Germans.—The first settlers of this country were Englishmen, who brought with them English ideas and English institutions. Yet the story of these ideas dates far back beyond the reach of authentic history, and our local institutions have their origin in the depths of the forests of Germany. Our first glimpse of the ancestors of the English people is in the pages of Cæsar and Tacitus, who wrote near the beginning of the Christian era. We find a people dwelling, in those days, in the wilds of Germany, speaking the same language and possessing the same religion, but agreeing in little else. No general government existed, and the social body seems to have been composed of a number of distinct tribes, each almost isolated from the other, unless common interests and common dangers compelled them to unite for the purpose of war.

90. Their Village Communities.—Each tribe was composed of a large number of villages. One of these village communities, the direct ancestor of the English township, was known as a mark. Each possessed a definite tract of land, which the marksmen appear to have owned in common, though a distinct portion was assigned to each freeman within the village or mark as a homestead. The remainder was

divided into two parts : (1) the tilled land, which was again divided into smaller lots and assigned to individuals from year to year, to be tilled under the laws of the mark ; and (2) the waste or pasture land, which all used in common, and which reminds us of the land held under the name of "commons" in early New England.

91. The Markmoot or Town-meeting.—The early German village was surrounded by a hedge or stockade for the purpose of protection and defence. The possession of a homestead entitled the holder to be regarded as a member of the mark, and gave him all the rights of a citizen. One of these rights was a voice in the markmoot or town-meeting, which controlled all local matters of interest to the mark. It met every spring, at least, and made all necessary laws for the proper management and tillage of the lands owned in common. There existed also a village council, which settled some questions of minor importance to the mark.

92. The Hundred.—In addition to the markmoot, there existed among the Germans another tribal division of considerable importance. This was called in Latin the *pagus*. Otherwise it was known as the hundred, and is spoken of, also, as the *canton* and the *gau*. In this, justice seems to have been dispensed. The hundred was a judicial body, before which came all cases arising in the marks composing it, unless they were of sufficient importance to be left to the decision of the full meeting of the tribe.

93. The Tribal Meeting.—This tribal meeting appears to have been both legislative and judicial. Here

were settled all questions of peace and war, and here officers were appointed to dispense tribal justice in the hundreds and the marks. Political action seems, however, to have been the chief business of the assembly, and the tribesmen met as soldiers fully armed. The exact difference between the tribal jurisdiction and that of the hundred and mark is perhaps not certainly known, but apparently it was akin to that between the superior and inferior courts of the present day.

94. Classes in the German State.—In determining who should have the right to sit in these various assemblies, two ideas seem to have prevailed; indeed, they were so interwoven that it is difficult to disentangle them: (1) No man could be a marksman who was not a freeholder; but (2) with this was combined the idea of rank or station. The primitive Germans were divided into the nobles, the freemen, the freedmen, and the slaves. The basis of society, however, seems to have been the freeman. He alone had his assignment of land within the mark, and possessed all the rights of the marksman. He could take part in the mark, hundred, and tribal meeting; he might keep and bear arms, and could engage in private war in company with any whom he might induce to join him.

95. The Nobles.—Of the origin of the noble class, we are not fully informed. Whether they were those families who had raised themselves above the others by distinguished service in war, or whether they were the descendants, in the more direct line, of the founders of the tribe, it is impossible to say. At any rate, they

held a high place in the tribe; they had privileges that distinguished them above the common people, and a greater penalty was imposed for taking the life of a noble than for taking that of a simple freeman.

96. The Freedmen and Slaves.—The slaves constituted the dependent class who were obliged to work for their masters, or, under exceptional circumstances, were allowed to manage their own affairs on condition of furnishing a certain amount of grain, cattle, or clothing each year. Of the actual condition of the class of freedmen who had once been slaves, we know little. They stood between the freemen and the slaves, and probably had no voice in public matters.

97. The Teutonic or Germanic Invasion of England.—In the fifth century of the present era, some of these Teutonic tribes began the invasion of England. Coming in detachments and settling here and there along the coast, they gradually overran the country, reproducing in England the institutions with which they had been familiar in their earlier home. The different conditions, however, brought about changes which finally ended in creating practically a new form of organization. The village community, which on the continent had been called the mark, now appears as the “tun,” or town, and becomes the unit of political organization. Henceforth, the town is not merely a community engaged in the cultivation of land, but one busied with civic affairs. The tie of kinship, always stronger and more prominent in primitive communities, was largely lost, and that of common interests substituted in its stead.

98. Representation.—The town-meeting still reg-

ulated the internal and local affairs of the town and elected its own officers, consisting of the headman or reeve, the beadle or messenger, and the tithingman or petty constable. It was represented in the hundred-meeting by the reeve and four picked men. Here we have the beginning of the representative system, which has attained such a development that it has now become the means by which popular government is possible for millions of people, widely scattered and having a variety of conflicting interests.

99. The Meeting of the Hundred.—The hundred, too, appeared as the court where all important cases were first tried. This meeting, in later times at least, occurred monthly, and was convened by the chief officer, the hundred-reeve, who was at first elected, but afterwards, as in earlier times on the continent, was appointed by a higher authority. The jurors were, in theory at least, all the freeholders of the hundred; in practice, cases were decided by twelve picked men, and all suits had to be instituted here before being considered by a higher tribunal. The powers of the hundred constantly diminished, till it practically disappeared, being retained only for some minor and comparatively unimportant purposes.

100. The Early Kingdoms and Their Union.—By the constant arrival of newcomers from the parent tribes, the Teutonic invaders of England gradually got possession of a large part of the island and established numerous kingdoms in the new land. Perhaps these kingdoms dimly represented the tribes of the old home; perhaps they came from developed hundreds; or, again, they may have been the creation of

strong and able leaders, who were enabled by the necessities of war to rule over large bodies of people. At any rate, each kingdom consisted of village or town communities organized into hundreds, in which the ideas of local government were fully developed. Soon the stronger of these came to absorb the weaker ones, until they were all united in the seven petty kingdoms that constituted the so-called "heptarchy" of early English history. A continuation of this process finally united all the people of Teutonic stock in England under one government. In this way a new adjustment took place; the petty kingdoms became the shires (shares) of the now consolidated state, while the previous shire, if it existed at all, became the hundred of the new kingdom.

101. The Shire.—The chief or leader of the tribe had been known as the "ealdorman" (alderman), and the chief officer of the shire, as the new division of the state was called, retained that title, now that the petty kingdoms had been consolidated. He was at first elected by the people, while another officer, the shire-reeve (sheriff), held office by royal decree. The latter thus became the agent who looked after the interests of the king, while the ealdorman (alderman) represented the people. As the shire more nearly represented the old tribe than any other organization of the state, the shiremoot came to represent the old tribal meeting, and cases of importance arising in the hundreds came here for final settlement. This made the shiremoot a judicial body, and in it the townships and hundreds were represented, the former by its reeve and four picked men, and the latter by

its reeve and twelve men. The great landowners and lords of the manors, as well as the officers of the church, had seats in it. It thus took on a double character; it was a legislative body as well as a court of appeal, and it became the means by which the king enforced his authority in local matters. The shire was also the unit for the collection of the taxes levied by the king.

102. The Rise of the Manor.—Meanwhile the changed circumstances in which the invaders found themselves had given rise to a change in the ownership of land. On the Continent, the greater portion of the tilled land had belonged to the community, while only a small portion within the village had been owned by the individuals. In England, when the conquered land was divided among the invaders, private ownership of lands was greatly increased, and the chiefs and great leaders received large tracts to be held in severalty. Private ownership thus increased year by year, until, little by little, the land passed largely into the hands of private parties. At first, however, large quantities were held in common, and this gave rise to the distinction of folkland, or that of the community, and bokland (bookland), or that owned by private parties. The large share which had been given to the chiefs gave rise to the class of great landowners who afterwards received the right of sac and soc, *i.e.*, the right to hold court and administer justice on their own estates, and to retain the fees arising therefrom. Others, also, in later times, received land from the king on similar terms, and the great estates, afterwards known as manors, in this way came into

existence. We have thus a new governmental unit taking its place in the state beside the township and the hundred, viz., the manor.

103. The Parish.—Christianity was early introduced into England, and local churches were soon established. The districts assigned to each church would naturally be the township and manor, although in individual cases a larger or smaller district might be made. Heathen shrines or places of worship may have existed in the townships, which, when purified and consecrated, became Christian churches. The township may thus have been both a parish and a manor, and in this way the three organizations came to overlap each other. Thus, the one or the other would be dominant as circumstances would dictate. At any rate, the parish, long years after, acquired power and prominence at the expense of the other two.

104. The Development of Anglo-Saxon Institutions.—We are now prepared to form an idea of the whole development that took place prior to the Norman conquest of England. Settlers from the mainland of Europe came in larger or smaller bodies, each under its own ealdorman or leader. These settlers were for years engaged in a war of conquest. Their leaders thus acquired increased power, and the ealdormen of the various tribes gradually obtained the dignity of kings. But the smaller and weaker kingdoms were soon swallowed up by the larger and more powerful ones, until, finally, all were absorbed in the so-called "heptarchy" (seven kingdoms), and even these finally became united in one. The petty

kingdoms themselves became the shires of the larger ones of which they had become a part, and retained a large share of their local authority. The power of the king gradually increased, being exercised largely through the shire and the hundred, while two new organizations, the manor and the parish, had arisen beside them, often covering the same ground as the township. The representative idea formerly embodied in the shiremoot now found expression in the courts of the shire and hundred, while the great increase of territory rendered impossible the old assembly of all the freemen of the tribe. Hence, the tribal council, which formerly consisted of the chiefs, and had charge of minor matters only, became changed in form and assumed new powers and duties. It now consisted of the ealdormen of the shires, the bishops of the church, and the great landholders, who met at the call of the king to act as his advisers. In this form it is known as the "Witenagemote" or assembly of the wise.

105. The Norman Conquest.—In this state of affairs some change was made by the Norman Conquest. William the Conqueror landed upon the southern shore of England in 1066, and, overthrowing Harold, the English king, soon made himself master of the whole country. He brought with him Norman ideas, and effected many changes, but still the old framework of government was allowed to stand; for while the distinctive features of local government remained, the great work of the Normans was the development of the national side of governmental life. The powers of the king were largely extended, and

the shire was adopted as the instrument of the king in local affairs.

106. The Shire of the Seventeenth Century.—At the time of the colonization of America the shire had lost the greater part of its legislative functions, and had become mainly a judicial and administrative division of the state. The ealdorman had disappeared, and the sheriff had become the most important officer, and, being appointed by the king, became his immediate representative. Justice was administered by justices who traveled from shire to shire for this purpose, under the direction of the king. The shire-moot had become the county court and held two sessions, at one of which the king's justices appeared, while the other, the ordinary session, was held at first by the viscount or sheriff. The institution known as the jury system had been evolved, and the county had become the medium of communication between the king and his people, in this way combining the functions of a local and a national court.

107. Functions of the Seventeenth Century Shire.—The entire work of the county or shire may now be classed under the following heads: (*a*) Ordinary judicial functions; (*b*) the preservation of the peace—this would naturally fall to the sheriff as the representative of the king; (*c*) military affairs—the county had become the unit of military organization; (*d*) redress of grievances—all petitions were forwarded to the king and parliament through the county court, and relief was obtained by the same means; (*e*) taxation—all national taxes were now levied through the county court, although the hundred still appears in

connection with it for some minor purposes. It will thus be seen that the old shiremoot has practically disappeared, and a new organization has taken its place, viz., the county court, while administrative functions have largely taken the place of the legislative powers that formerly belonged to it. The ordinary session of the court had come to be held by county justices of the peace, and was known as the "quarter sessions," since it was held four times a year. The officers of the county, then, were the sheriff; the coroner, who held courts of inquiry in cases of wreckage, destructive fires, or sudden deaths; the justices of the peace, who were selected by the king; and the constables, also selected by the king, and having the appointment and control of the police of the county. To the first settlers of this country, then, the county was merely a district for judicial and administrative work.

108. The Later Form of the Parish.—The parish, too, experienced a great enlargement of its functions. Not only had the church as a state organization come to possess largely increased powers, but the local churches had come into the possession of land and estates, which so greatly increased the duties of the ministers that church wardens were appointed to look after this part of the work. Lack of sufficient income from property and tithes rendered some form of taxation necessary, and this gave rise to the vestry meetings, so called, perhaps, because they were held in the vestry of the church. This was simply the old townmoot in a new form, but it was held under the auspices of the church. In this all who paid a parish

tax had a voice. The parish soon gained other civil functions, and thus came to do double duty, (*a*) as a civil township under the lead of the parish constable, and (*b*) as a church organization under the leadership of the minister. The care of the poor was also laid upon it, and the church wardens in this way came to be overseers of the poor. The parish had now assumed a large share of the powers of the civil township, while the latter organization had fallen more and more into the background, not, however, to be entirely forgotten. It is also important to remark that the manor had been more and more restricted by law, so that the parish had now become the more important of the lower organizations, and had far the greater powers.

109. Some Special Phases of Parish Development.—About the time the first immigrants were coming to this country, a new feature was introduced into parish government, viz., the committee of assistance. It was the duty of this committee to advise the officers of the parish in the performance of their duties. They were at first elected in open parish meetings, and in this feature remind us of the selectmen of New England. Later they acquired the power to fill vacancies in their own body, and thus became a self-perpetuating organization. It is interesting to note that a similar self-perpetuating organization appears a little later in Virginia, in connection with the government of the shire or county.

110. Some Principles of Government.—The representative features that had in earlier times been embodied in local government disappeared with

the lapse of centuries, only to reappear in the government of the whole state. The Witenagemote had become the House of Lords, while a new body, the Commons, had sprung up beside it, representing the people. The history of England for three centuries before the settlement of America was a history of the resistance of the people to the encroachments of the king. Aided and trained by their experience in local government, they had succeeded in transferring the representative feature to the nation, and had established the House of Commons to guard their rights. This represents the English people, as distinguished from the nobles and clergy. The long struggle, ending only with the Declaration of Rights in 1689, resulted in firmly fixing in the minds of the people several principles that they believed to be essential to all good government, and with which the first emigrants to America came fully imbued. These were: (*a*) A single executive so restricted by law that his powers could not be used to deprive the people of their rights; (*b*) self-government through the local units of the parish and the shire; (*c*) a legislature composed of two houses, one of which at least must represent the people; (*d*) an independent judiciary; (*e*) the complete control of taxation by the people, either directly or through their representatives. We know that it needed further effort and another severe struggle before our fathers could be secure in the enjoyment of the rights which these principles were meant to guard.

CHAPTER IX

DEVELOPMENT OF THE INSTITUTIONS OF LOCAL GOVERNMENT IN THE UNITED STATES.

111. Motives for Colonization.—The two motives which worked most powerfully in bringing about the English colonization of America were : (1) the desire for wealth, and (2) the wish to escape ecclesiastical persecution and obtain religious independence. The former motive was dominant in the Southern colonies, while the latter prevailed almost wholly among the emigrants to New England. We may expect, then, to find a different spirit pervading each section, and to learn that the evolution which their local institutions now underwent and their adaptation to a new country proceeded along slightly different lines. Each set of colonies established here the institutions with which they had been best acquainted, but each introduced different modifications, and made changes according to their own peculiar sentiments and social needs.

112. The Early Settlers of New England.—The men who settled New England had been in the forefront of the great social and religious struggle which had rent the people of England into two hostile factions, and drenched her soil with blood. The efforts of the Church to maintain her supremacy resulted in kindling the fires of persecution, and in driving from the shores of England thousands of the noblest of her sons. The Pilgrim and Puritan had seen all

the powers of the state exerted to stifle religious freedom, and to compel conformity to the established forms of worship. It was only natural, then, that they should strive, in erecting the framework of government in their new home, to avoid in some measure the errors of the past. This was to be accomplished, however, only by the process of growth and the wisdom that comes from experience.

113. Reversion to an Earlier Type.—Two interesting phenomena appear in the development of the local government of New England: (1) On the one hand, a large number of new officers and new functions are created, and (2) on the other hand, there is a reversion to the earlier type, and the institutions of a thousand years before reappear, practically unchanged, in the New England town. This may not have been a conscious process, but merely the imparting of new life and vitality to a form of government not wholly extinct in England, which now revived and underwent further evolution.

114. The New England Town.—The name town now reappears, while parish is kept for strictly ecclesiastical purposes. The word township is used only when it becomes necessary to distinguish the whole landed district from the village, which formed the center of the new life. The house lots, the common lands for cultivation, the common meadows and pasture lands everywhere reappear, and new land is apportioned by lot among the inhabitants, according to the number of heads in each family. The community, too, exercised the right to restrict its members in the disposal of their lands and communal rights

without the consent of the town-meeting or the officers of the town. They decreed that no person should sell or convey, without the consent of the proper authorities, the lands possessed by him within the township; the new comers could be admitted and become possessed of communal rights only upon consent of the officers. The majority in town-meeting even sought to control its members after the fashion of the ancient marksmen, and one instance is on record where a citizen was obliged to procure the public consent to his own brother's remaining in his house as a guest till he could establish a home, either in that town or some other one.

115. The Town-Meeting.—The old townmoot reappeared with full authority to govern the internal affairs of the town, with largely increased functions and full legislative authority. All males of legal age seem to have had a share in its deliberations, non-freeholders, as well as those possessed of communal rights, although a property qualification seems to have been early established. When assembled, they proceeded to the choice of a moderator, as the presiding officer is still called. He had entire charge of the meeting; no one could speak without his permission, and he could impose fines for disorderly conduct, or even compel the withdrawal of the disorderly parties. When thus organized, the town-meeting had full power in all prudential affairs. It could direct the raising of money by taxation, and govern the expenditure of the same. It chose all the important officers of the town, as must have been the case with its early predecessor, the mark; likewise, the records of the

early town are full of orders in regard to the management of the common lands, the use of fields and pastures, regulations in regard to cattle running at large, the laying out of roads, and the allotment of lands. A new feature is the orders in regard to the establishment and management of schools.

116. The Town as a School District.—Many of the Massachusetts townships, by their own acts, became school districts, and maintained schools before required to do so by the General Court (Legislature) of the Colony. The town of Dorchester created a school board, and passed an elaborate school ordinance as early as 1645. This ordinance is perhaps the first New England school law in existence, at least in so extensive a form. It provided for the appointment of a school board of three members, and arranged for the funds necessary to pay running expenses. It directed the hiring of a teacher, and made regulations in regard to the management of the school. It fixed the time of opening and closing the school, and required the teacher every Monday morning to examine the pupils upon the subject of the sermon of the previous day. It required the school to be opened and closed with prayer, and directed the teacher to discipline the pupils for misdemeanors committed upon the Sabbath. It made the course of study to consist of "humane learning and good literature," to which it added the catechism, and provided for the settlement of cases of dissatisfaction arising out of the infliction of too severe corporal punishment.*

* On the early schools of New England, see B. A. Hinsdale, *Horace Mann and the Common School Revival in the United States*.

117. Township Officers.—The chief officers of the town were the selectmen, who were the representatives of the townsmen during the interval between the annual meetings. They were responsible to that meeting, but were given liberal powers to act meanwhile. Their proceedings were recorded in the book in which were kept the proceedings of the town-meeting, and are often indistinguishable from them. It was the duty of the selectmen to call the annual meeting, and they had entire charge of the administration of financial affairs. They assessed the taxes, authorized their collection, audited all accounts, and were the legal representatives of the town before the courts. They admitted new comers into the community, and made rules in accordance with which strangers were entertained. No real estate could change hands without their consent, and they were authorized to fix a penalty for any violation of this rule of the town. The common lands were under their control; they regulated the number of cattle to be pastured upon them by any family, and granted permission to cut the grasses upon the marshes; they laid out roads, established boundary lines, and fixed the height and kind of fences which might be built. In short, they had charge of all internal affairs. The full reach and extent of their authority may be seen from a simple list of the subordinate officers appointed by them; viz., hog-reeves, water-bailiffs, cow-keepers, fence-viewers, town-drummers, constables, tithing-men, perambulators, town treasurers, ringers and yokers of swine, pound-keepers, sealers of weights and measures, town bellmen, cullers of staves, measurers

of corn, overseers of wood, corders, overseers of chimneys and of chimney sweepers, gaugers, viewers of casks, and firewards. They were often constituted overseers of the poor, looked after schools, were required to set idle and disorderly persons at work, and to bind out poor children as apprentices. In Plymouth colony they could even try actions of debt, settle disputes between settlers and Indians, and had a censorship over private morals, in one case issuing an order that no "single person" should live otherwise than as a member of some well-ordered family. In all this we see how distinctly they represented the townsmen in their legislative capacity.

118. The Town Self-Governing.—It will now be evident that the town was in the fullest sense a self-governing community. The existence of a number of these communities, side by side, would soon call for some form of general government, since common interests would demand more or less of united action. It had been the intention to hold a general court of all the freemen of the colony four times a year. At this a governor, deputy governor, and eighteen assistants were to be chosen, who were to meet once a month. The primary assembly soon became impossible from the increase of population, and a representative assembly took its place (compare the tribal meeting of the marksmen). The general court, or legislature, of the Colony thus became both a legislative and a judicial body, apparently acting co-ordinately with the governor and assistants. At first they met together, but soon separated into two houses, the upper one

formed of the assistants, and the lower one composed of the deputies from the townships.

119. Creation of the County.—It was not for several years that the need of county or shire government was felt, so thoroughly did the town meeting and general court do their work. In 1636, it was ordered that the magistrates should hold four great quarter courts yearly at Boston, all business of importance having been hitherto conducted by the general court and the court of assistants. At the same time, quarter sessions were established at Ipswich, Salem, Newton, and Boston, in distinction from the “great courts” previously mentioned. In 1643, four shires were formally established, which was little more than a recognition of facts already existing. The work of the shire (county) thus began with the exercise of judicial functions. During the next century, various changes of the charter of the Massachusetts colony followed, in consequence of which the county acquired power at the expense of the town. In other New England colonies, practically the same results were reached in slightly different ways.

120. Functions of the Old New England County.—In general, the functions of the county were as follows: It was given charge of all probate matters; it directed the laying out and construction of roads and bridges between two or more towns; it appointed commissioners to solemnize marriages; it could fine the selectmen and the assessors, and could appoint the latter if the town failed to do so; it even invaded the province of the parish by appointing ministers and providing for their maintenance, when the proper

authorities failed to attend to these duties; it was given authority to fine the towns themselves for neglect of certain matters made mandatory by law; and the by-laws of the town were not valid unless approved by the county court. When the fines and fees were not sufficient to defray the necessary expenses of the county, the county was authorized to make a levy for this purpose. The task of equalizing assessments was given to the county. The militia of each county constituted a regiment, of which each town furnished a company. Here, too, originated that feature which has become so prominent in modern politics, the nominating convention.

121. The Modern New England County.—The continued increase in population and the necessity of uniformity in local law caused the general court to assume many functions formerly exercised by the town, while others were given to the county. As at present organized, in Massachusetts, the county is constituted as follows: It must maintain court houses and jails, and suitable buildings for the preservation of deeds, wills, and court records. Its commissioners, as the chief officers are called, have general charge of all county property, provide for the care and maintenance of all public buildings belonging to the county, determine the amount of the county tax, and apportion it among the towns. They may lay out or discontinue county highways, and construct bridges; they have charge of the jails and houses of correction, appoint their keepers, making all needful rules for their management. The other officers are a sheriff, by far the most important, a treasurer, register of deeds, regis-

ter of probate, and justices of the peace, including the so-called trial justices. The superior court (an inferior State court) is held at least twice each year in each county. There is also a probate court presided over by a probate judge, and the towns are grouped into districts in which a district court is held. It is possible that we have in this a survival of the old hundred-court. The county has no legislative power, and there are no representative features left. Outside of the above features, the towns are independent and subject only to the control of the State, since their powers are defined and limited only by the State law.

122. The Modern New England Township.—The New England township at the present day is a body politic and corporate, with all that these terms imply. It has complete control of its own affairs, and may raise money by taxation for the following purposes: To support schools, take care of the poor, maintain highways, care for burial grounds, maintain a fire department, destroy dangerous and noxious animals, support public libraries, detect offenders, repair and decorate soldiers' graves, aid and support disabled soldiers and sailors, and defray all other necessary town charges. The flexibility of the latter statement may be understood from the fact that, at the time of the Civil War, the towns raised and spent thousands of dollars to fill the quota of soldiers to be raised by each to avoid the necessity of a draft.

123. The Officers of the Town.—The officers of the town are the selectmen (who, as in early times, are the representatives of the freemen during the

interval between the annual meetings), assessors, overseers of the poor (although the selectmen usually discharge the duties of these two), town clerk, treasurer, collector of taxes, constables, and school committee. The assessment and collection of taxes are independent of the State and county, which look to the town for their share of the proceeds. The school committee has entire control of the schools, except that by a recent law two or more towns may join in employing a superintendent when unable to do so independently. There are also surveyors of the highways, field drivers, fence viewers, surveyors of lumber, measurers of wood, and scalers of weights and measures. It is only within recent years that several of the other offices mentioned in Section 117 have become extinct. On the whole, the town, though shorn of some its ancient authority and power, is still the most important unit in the State.

124. The First Settlers of the South.—The men who settled Virginia came with purposes far different from those of the people who planted their homes upon the bleak shores of New England. They had no quarrel with either Church or State, and, coming as they did upon a purely business venture, they had no grievances for which they sought redress. They accordingly reproduced the institutions of the home land, with only such changes as the new conditions seemed to demand. While the New England colonists were nearly all of like social standing, in Virginia the various social classes of England were generally represented. Thither came the pauper and the criminal, as well as the gentleman and the tradesman, while

the early introduction of slavery profoundly affected social relations, and tended to prevent the growth of purely democratic ideas.

125. Physical Conditions.—Unlike the people of New England, the residents of Virginia did not live in close villages, but scattered in large plantations over the country. Each plantation constituted a world by itself, having its own slaves and workmen and its aristocratic owner. The rivers, opening the whole eastern part of the country to colonization, prevented the growth of cities for a long time, since each planter could have his goods brought by ship almost to his door, and it was easy to dispose of the products of his plantation as the return cargo. The law of entail, by which the eldest son inherited the father's estate to the exclusion of the younger children, tended all through colonial times to prevent the division of great estates and promoted the growth of aristocratic ideas. This condition of things prevented the adoption of the township or open parish meeting, and consequently the only resource was the select vestry and county government.

126. The Parish in Virginia.—We have seen that, when colonization began in the seventeenth century, the most important local unit in England was the parish. This had absorbed into itself both the ecclesiastical functions of the church and the powers of the old township. It had also lost a large part of its old democratic organization, and had become in large measure a close corporation, with powers concentrated in the hands of a few men. It was this centralized parish that appeared in Virginia. In New

England, the political side of the English township, as well as many of the powers exercised by the county, appeared in the town government. In Virginia, an almost complete reproduction of English usages is found. The names of hundred and manor are indeed used, but they were without doubt parishes in fact, and soon became such in name. At any rate, the name parish appears in the records of Elizabeth City in 1631, and, since the term "church wardens of hundreds" appears also, it would seem that the three names were at first used without close discrimination. The parish, at first, was governed by twelve selected men, who at an early day seem to have been chosen by the voters of the parish, but they soon acquired the power of filling the vacancies in their own number, thus closely following the English model.

127. The Parish Officers.—While the chief authority was in the hands of the select vestry, the executive power rested in the church wardens, who had the general oversight of parish matters. They made the assessment of the parish tax, provided a residence for the parish minister, had the care of the poor, and looked after the establishment of boundary lines. They attended to the collection of the tax and disbursed all parish funds, watched over the morals of the community, and were required to present to the county court persons guilty of various offences, a function which they performed conjointly with the grand jury. They were elected by the vestry from its own members. The minister was also an important officer. He presided at all parish meetings, solemnized marriages, and, in conjunction with the parish

clerk, kept a record of all christenings, marriages, and deaths in the parish. By an act of 1662, the parish was authorized to send two representatives to the county court, who should have an equal voice with the justices in making by-laws, an evident attempt to restore the ancient representation of the "reeve and four" in the shiremoor.

128. Organization of County Government.—

The county, like the parish, was closely copied from English institutions. It became, after the parish, the chief instrument in local government. The county court, modeled after the English quarter sessions, became the agent for transacting many kinds of business which came before the New England town-meeting. The court was composed of justices appointed by the governor. However, as the court recommended suitable persons to the governor for appointment, the court soon became, like the vestry, a close corporation controlling its own membership. The number of justices was usually eight, of which four constituted a quorum for the purposes of business. An inferior court for the trial of petty cases might, however, be held by a single justice. The court had jurisdiction in all cases of "life and limb," and in all civil cases involving less than £16 its decision was final. The court appointed its own clerk. The sheriff was its executive officer, and was originally a member of the court itself, a condition of things that reminds us of the ancient right of the sheriff to preside at the shiremoor.

129. Functions of the County Government.—

The court had charge of roads and bridges, divided

the county into districts, for which it appointed highway surveyors, had the appointment of constables, and could establish parishes, although this power was later assumed by the legislature. All ferries were under its control; it could offer a reward for the destruction of dangerous and noxious animals; it could appoint tobacco viewers, admit attorneys to practice, and levy all taxes except those intended for the support of the parish. It thus exercised a large share of the functions of local government. The county was also the military unit, and the chief command within its limits was vested in a commander or county lieutenant, who was appointed by the governor, thus again reminding us of the lord-lieutenant of the English shire. As an executive officer of the county, he was empowered to enforce the laws against certain minor offences, such as drunkenness and profanity, and was authorized to see that the people attended church on the Sabbath.

130. The Later Development.—It will now be seen that the county court had legislative, judicial, and administrative functions. The evolution which American local government has undergone has resulted in placing these functions in separate hands. The legislative functions have been largely taken from the county court and given over to the State legislature, while the administrative features have mostly been given to a special board, known in some States as commissioners, in others as supervisors. In other words, the court has been divided into two sections, to one of which the judicial duties have been partially left, while all administrative and executive duties have

passed to the other. The county court has thus been shorn of its old-time power, and in most States even its judicial functions have largely passed over to the judges appointed by the State and holding court within the county, while only minor matters are left to the county. In some places only probate matters are now within the jurisdiction of the county court.

131. Other Southern Colonies.—The Virginia colony was typical of local government in the South. At first, however, the manor and hundred retained far more power in the other colonies than in Virginia; but after the Revolution, these gradually lost importance, while the county gained at their expense.

132. Local Government in Pennsylvania.—It was reserved for the people of Pennsylvania to reproduce the primitive shire with far more power than it had in any place since the days of the English heptarchy.* All the powers of local government were thrown into the hands of the county, while the lower units were almost wholly ignored. The county became the unit of representation in the legislature, while the county court became the organ through which the will of the people was executed in all local matters. The county court thus acquired not only all the powers of the county in other colonies, but those of the New England town-meeting as well, leaving to the people merely the choice of the persons who should exercise these powers. The increase of population has, however, caused the township to develop itself for many minor purposes, and the division of the county court has here also thrown the

* See Section 104.

main features of county administration into the hands of a board of three commissioners. Among the matters given to the township boards are the care of roads, the support of the poor, election matters, etc. It will be seen that the township is developing at the expense of the county.

133. The Two Systems of Local Government.—It will now be seen that two widely different systems of local government have been developed, starting with practically the same ideas: one in which the township is the important factor, while the county remains of much less importance; another in which the county discharges the important features of local administration, while only comparatively unimportant matters are entrusted to minor organizations.

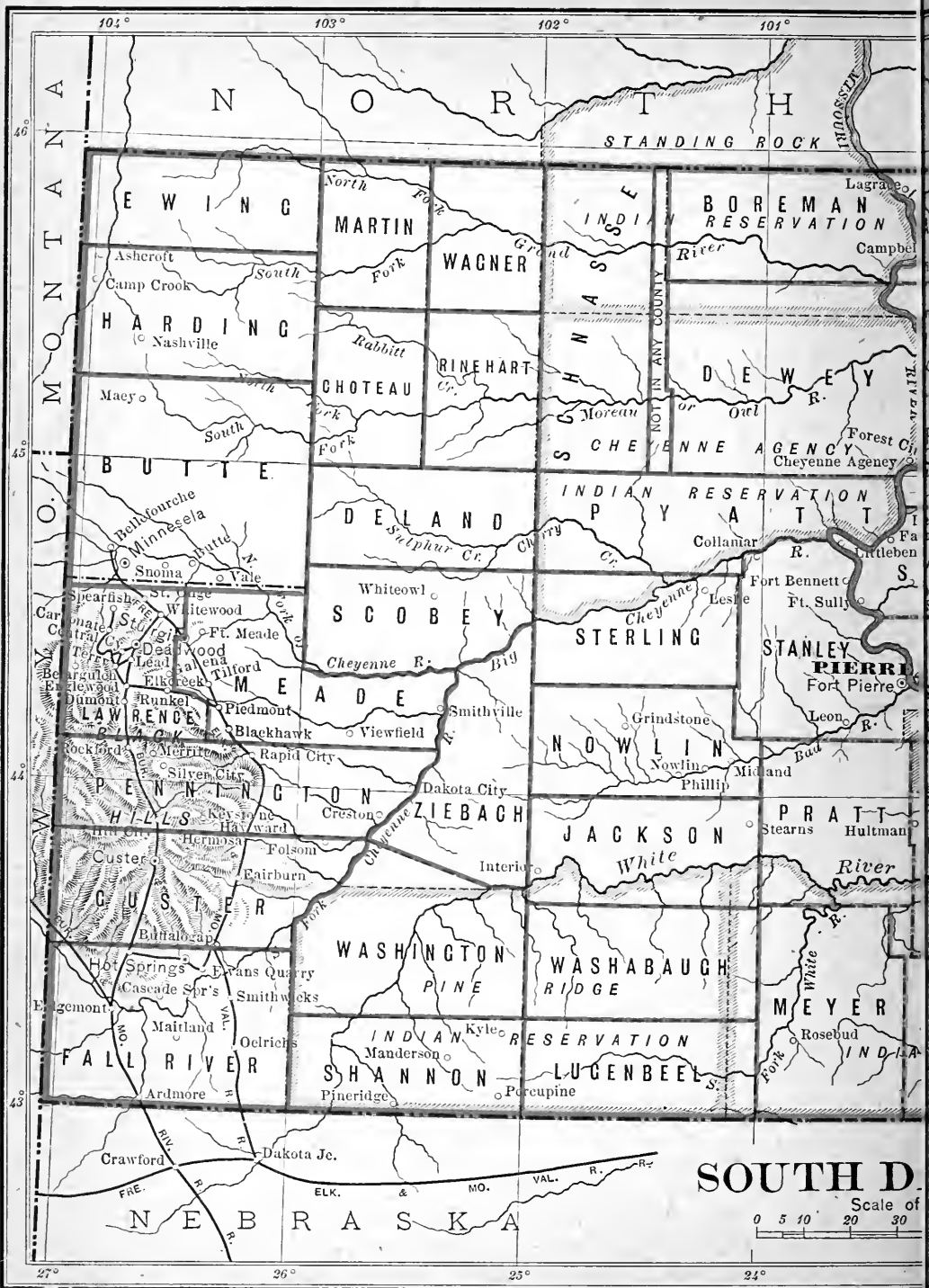
134. Local Government in New York.—In New York a compromise system appeared. Here the county exists side by side with the town, and powers are more evenly divided between them. The county board is representative and is made up of the supervisors of the towns. Each local unit thus has its representative in the county legislature, or shiremoot, as the new board may fairly be called. This board has charge of all county affairs and a general oversight over much that is done in the townships. Under its care are all county roads and bridges, and it must provide for their care and maintenance; it has the oversight of all county property, audits the accounts of all county and township officers, and directs the raising of funds for the payment of all claims against either township or county. It levies all taxes except

those for the support of schools, and constitutes for many minor purposes a county legislature.

135. Contrasts Between the Three Systems.—It will be observed that, in New England, the county grew up at the expense of the town, while in Pennsylvania, the township has grown up at the expense of the county. In Pennsylvania, county affairs are managed by a board of three commissioners ; in New York, by representatives elected by the townships. In New York, the poor are maintained partly by the county, partly by the town, while in Pennsylvania they are cared for wholly by the county. In New England, on the other hand, the township has entire charge of the poor, except in those cases that cannot fairly be charged to any of the townships. The schools in all these States are maintained by the townships or other local units, but are partly under county control, especially in New York and Pennsylvania. New England has the township meeting, with full powers restricted only by statute law ; New York has retained it, but has transferred many of its powers to the board of supervisors ; while in Pennsylvania its powers are exercised by a township board.

136. Local Government in the West.—The development of local institutions in the West has been marked by rivalry and conflict between the township system of New England and the county system of Virginia. In Michigan, the people were not satisfied with the restricted powers first given to the townships, and the powers and functions of the townships here have been increased, until now they are nearly as extensive as are those of the Massachusetts

township. Southern Illinois was settled by people who brought the political ideas of Virginia, while the northern portion of the State was settled mainly by men from Ohio, New York, and New England. At first the county system prevailed, but finally the large increase in population in the northern part brought about the adoption of the local option plan, and under this the township system has gradually gained ground, until today it prevails in the greater portion of the State. West of the Mississippi the same tendencies and conditions may be traced. At first, while the population was sparse and widely scattered, the county system was exclusively used, as best adapted to the immediate needs of the people; but later the township has steadily encroached upon the exclusive county organization. This may be seen in the history of our own State. At the first, only county organization was to be found. Toward the close of the Territorial period, township organization rapidly gained ground, and it is only in the newer counties now that both systems of organization are not to be found side by side. This produces a compromise or mixed system of county organization, which possesses peculiar strength and promises to spread wider and wider.



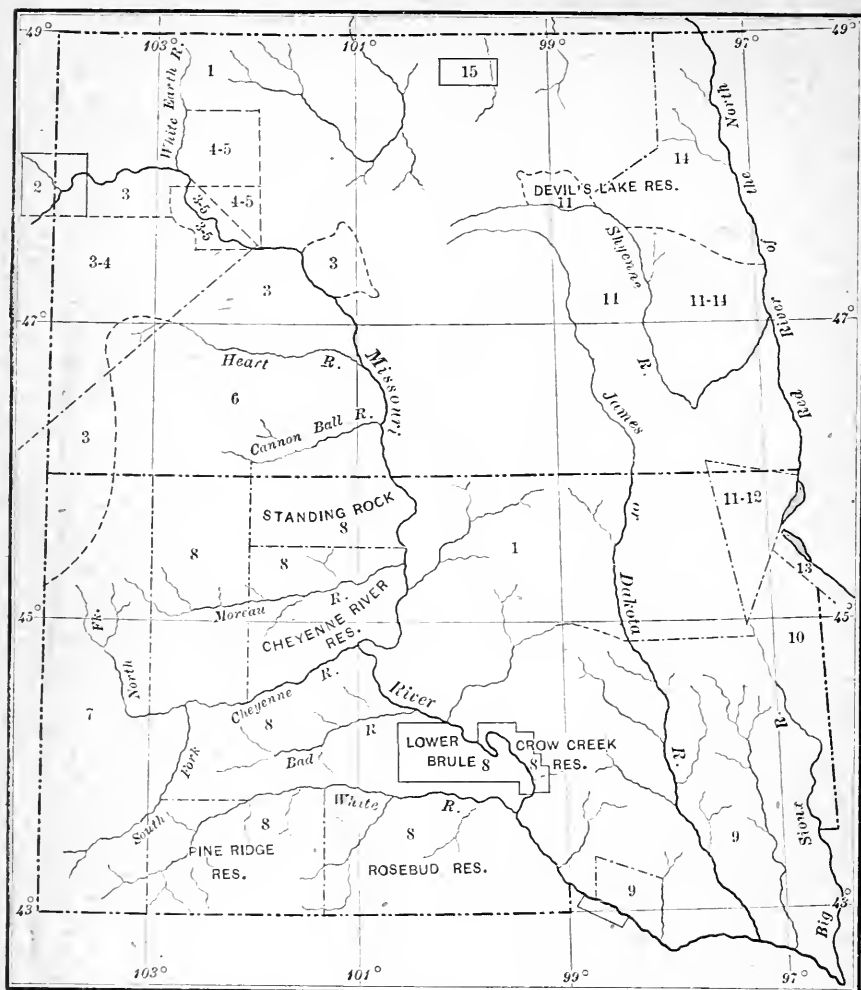
SOUTH DAKOTA
Scale of miles
0 5 10 20 30



MAP OF NORTH AND SOUTH DAKOTA,

Executed by Department of the Interior,

SHOWING INDIAN CESSIONS, ETC.



- 1—Not covered by treaty.
- 2—Fort Buford Military Reserve (abandoned).
- 3—Executive Order, April 12, 1870, establishing Arickaree, Gros Ventre, and Mandan Indian Reservation.
- 4—Executive Order, July 13, 1880, restoring certain land to public domain mentioned in Executive Order April 12, 1870, and reserving land for use of Arickaree, Gros Ventre, and Mandan Indians.
- 5—Agreement with Arickaree, Gros Ventre, and Mandan Indians, Dec. 14, 1886.
- 6—Treaty with Sioux Indians, April 29, et seq., 1868.
- 7—Agreement with Sioux and Northern Arapaho and Cheyenne Indians, September 26, 1876.
- 8—Agreement with Sioux Indians, March 2, 1889.
- 9—Treaty with Yankton Sioux, April 19, 1858, and Agreement with Yankton Sioux, Dec. 31, 1892.
- 10—Treaty with Sioux, July 23, 1851.
- 11—Treaty, Sisseton, and Wahpeton Sioux, February 19, 1867, and Agreement with Sisseton and Wahpeton Sioux, Sept. 20, 1875.
- 12—Agreement with Sisseton and Wahpeton Sioux, December 12, 1889.
- 13—Act of Congress approved February 16, 1863.
- 14—Treaty with Red Lake and Pembina Chippewa Indians, Oct. 2, 1863.
- 15—Executive Orders, December 21, 1882, March 29 and June 3, 1884, establishing Turtle Mountain Reservation.

PART III

THE CIVIL INSTITUTIONS OF SOUTH DAKOTA

CHAPTER X

THE GOVERNMENT LAND SURVEY

137. Origin of the Land Survey.—The present system of land surveys was, in its main features, originated by the Continental Congress in 1785, and was based, it is believed, upon the suggestions of Jefferson.* The system is known as the “rectangular system of land surveys,” since the township and all its smaller subdivisions, when Nature permits, are rectangular in form as a result. It was applied, originally, to the Western Territory beyond the Alleghenies and east of the Mississippi, which had been ceded by the individual States to the United States and acquired by purchase from the Indians. It was later extended to all public lands. A general land office was established in 1812 as a part of the Treasury Department and given control of all public land surveys. The general land office was transferred to the Department of the Interior, at its creation in 1849.

* See B. A. Hinsdale, *The Old Northwest*, Chap. XIV., and *Ohio* in State Series, Chap. VII.

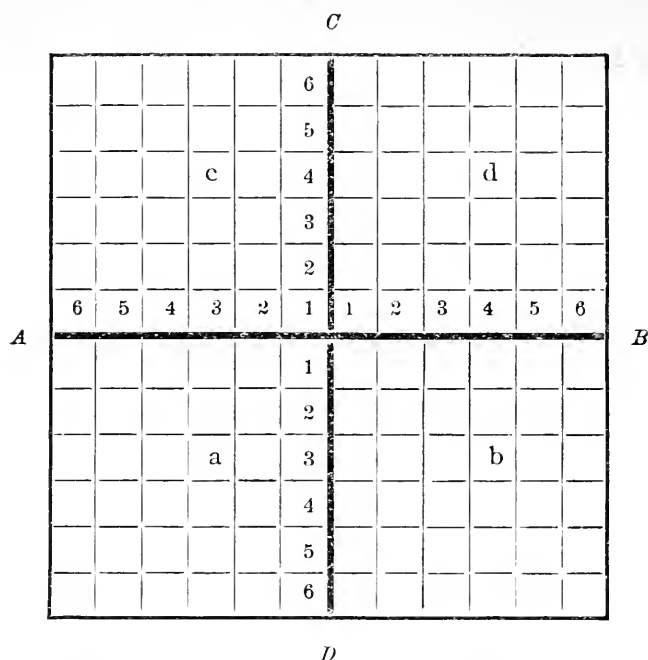


DIAGRAM SHOWING PLAN OF GOVERNMENT SURVEYS.

CD is the principal meridian, and *AB* is the base line. Townships are numbered each way from the base line, and ranges are numbered each way from the principal meridian. *a* is township 3, south, in range 3, west; *b* is township 3, south, in range 4, east; *c* is township 4, north, in range 3, west; *d* is township 4, north, in range 4, east.

138. Base Line.—According to this system, as in use at the present time, the base of all measurements for any given large area is taken from two lines, one a meridian, known as a principal meridian, and another intersecting this at right angles, known as a base line. Twenty-four principal meridians have been established for Government surveys. On each side of the principal meridian, range lines are run, six miles apart; and on each side of the base line, parallel lines are run, six miles apart. The last are called township lines, and

the land divisions thus created are known as Congressional Townships.

139. Range and Township Lines.—Thus range lines and township lines divide the land into townships six miles square. Townships are divided into sections and quarter sections. Townships are numbered consecutively north and south of the base line, while ranges are numbered east and west of the principal meridian. Sections are numbered by beginning in the northeast corner of the township, and proceeding west and east alternately till No. 36 is reached. Quarter sections are located in a section by designating them as the northeast quarter, northwest quarter, southeast quarter, and southwest quarter.

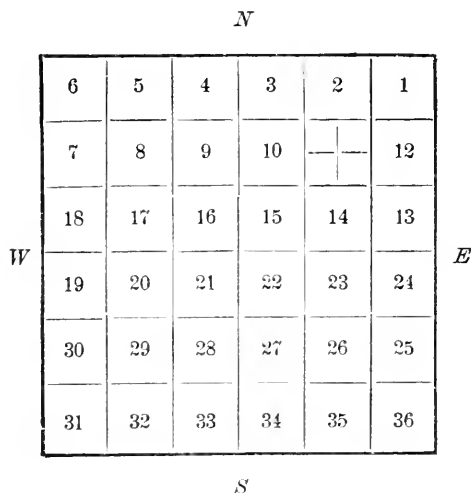


DIAGRAM OF A TOWNSHIP SURVEY.

Locate the N.W. $\frac{1}{4}$, Sec. 11; the N.W. $\frac{1}{4}$, N.W. $\frac{1}{4}$, Sec. 11; the N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, Sec. 11; the S.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$, Sec. 16.

140. Correction Lines.—As the intervals between the meridians diminish as we go north, owing to the

shape of the earth, it is necessary to make corrections frequently in order that the townships may, as nearly as possible, be six miles each way.

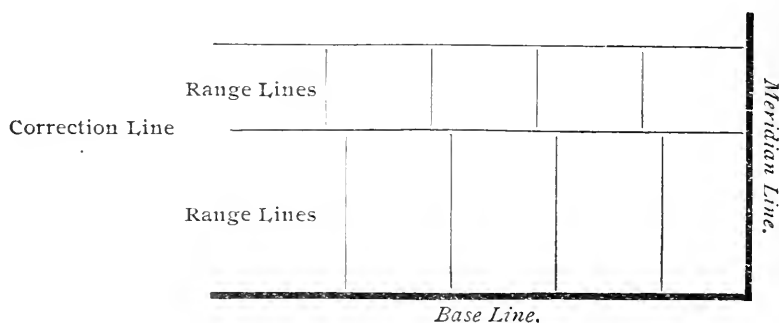


DIAGRAM OF CORRECTION LINE.

Correction Lines are usually run every twenty-four miles, as the survey advances northward, and on these lines, called "standard parallels," the meridian range lines are founded six miles apart, and thus the correct interval between range lines is preserved. In actual surveying operations some correction line near the locality is selected for what may be called a sub-base line, and the work is based upon that. Townships are always numbered, however, from the original base line. The local or sub-base line for the survey in this State, east of the Missouri, is the westward extension of the line between Minnesota and Iowa, forming the southern boundary of Minnehaha, Davison, and Brule counties. Besides this there are seven other correction lines, counting the one forming the northern boundary, the seventh standard parallel, numbered from the sub-base line.

141. The Principal Meridian.—The principal meridian from which the survey in this State east of

the River proceeds, is coincident with $90^{\circ} 58'$ longitude, west from Greenwich, and starts from the mouth of the Arkansas River. The base line, at right angles with this, from which township lines are run, starts at the mouth of the St. Francis River, in Arkansas, and extends westward. The number of any township in the eastern part, multiplied by six, will give the distance in miles from this line; and the number of any range, multiplied by six, will give the distance from the principal meridian, in miles.

142. Base Line in Western Part.—The western part of the State has a survey not connected with that of the eastern part. Its base line is the parallel of 44° north latitude.

143. School Sections.—In this State, and in all the newer Western States, sections 16 and 36 of every township are reserved from settlement to be sold or leased for the benefit of the public schools.*

* Before 1850, the rule was Section 16; since that time, Sections 16 and 36. See B. A. Hinsdale, *Report of the Commissioner of Education*, Part III., Chap. I., pp. 1264 *et seqq.* Again, from 1785 to 1796 the method of numbering sections was different from the one followed since that time, as shown in this block of figures :

36	30	24	18	12	6
35	29	23	17	11	5
34	28	22	16	10	4
33	27	21	15	9	3
32	26	20	14	8	2
31	25	19	13	7	1

CHAPTER XI

THE CIVIL TOWNSHIP

144. The Civil Township in South Dakota.—

The principle of local control in local affairs is deeply seated in all people of English descent. Both in England and in America this idea has lived through all the manifold changes in governmental affairs. Local interests most concern the individual citizen, and hence township matters are managed directly by the people themselves in annual assembly, or are delegated to a board of officers chosen in open town meeting, and made immediately responsible to the electors. In South Dakota, as in other parts of the West, county government was organized first, on account of the sparseness of population. It naturally assumed the greater share of power; and, while the deliberative town meeting exists for minor purposes, its powers are so limited that it is not the great educator in civic affairs that it is in New England. Arrangements are made so that any county can be organized into civil townships as soon as desired by a majority of the voters, and there appears to be a tendency to enlarge the powers of the township from time to time as occasion seems to require.

145. The Civil Township Defined.—A township is a body corporate and politic. In its corporate capacity it has power to sue and be sued, to purchase and hold land, within its limits, for the corporate use

of its inhabitants; to make such contracts and to hold such personal property as may be necessary for the exercise of its powers; and to make necessary orders and regulations regarding the use and control of the property held by it. It is also a body politic, since it has political functions to perform as a part of the county and State, and also since it is a government for affairs of a purely local nature.

146. Organization of the Township.—The boundaries of the civil township correspond commonly with those of the Congressional township, except when natural barriers make this undesirable. Upon petition of a majority of the voters in any Congressional township having at least twenty-five qualified voters, the county commissioners must proceed to establish the boundaries of the proposed civil township, and call a meeting for the election of officers. After the boundaries are established and the officers elected, the township is said to be organized, and it thereafter manages its affairs as an independent political body.

147. Organization and Conduct of a Town-Meeting.—The annual town-meeting of each organized township is held on the first Tuesday in March. Special meetings may be called by the board of supervisors. The clerk of the township is required to post three notices ten days previous to the time of holding the meeting, announcing the time and place. The meeting is called to order by the town clerk, and the first business is the election of a moderator, or presiding officer. The moderator announces the order of business coming before the meeting. The town clerk

acts as clerk of the meeting, and keeps a record of all its acts. Three judges of election are chosen at the meeting, who decide all disputed points arising in the election of officers. All important officers must be chosen by ballot. Every qualified elector of the township has a right to vote in the meeting.

148. Powers of the Town-Meeting.—The electors assembled in town-meeting have the following powers: (*a*) To elect all town officers required by law; (*b*) to determine the number of poundmasters and make rules for pounds; (*c*) to direct all actions at law involving the township; (*d*) to determine, upon the petition of twenty-five voters, whether intoxicating liquors shall be sold within the limits of the township; (*e*) to impose penalties, not to exceed ten dollars for each offense, for the violation of the rules and by laws of the township; (*j*) to vote to raise and appropriate money for the construction and repair of roads and bridges, and for other public improvements within the township, for the support of the poor, and for all other necessary expenses of the township.

149. By-Laws.—Townships are permitted to make rules and regulations concerning matters coming within their authority, and such rules and regulations are known as by-laws. They must be passed by the town-meeting, and be posted in three places in order to be binding upon the inhabitants. By-laws are laws of the township in the same sense that laws passed by the legislature are laws of the State. "By" is an old Norse word meaning town. The town meeting is a democratic assembly in the truest sense.

150. Officers of the Township.—The officers of the township are the board of supervisors, the town clerk, treasurer, assessor, justice of the peace, constable, and overseer of highways. They are elected at the annual meeting, and must assume office within ten days after receiving notice of their election. Before the newly elected officer can assume the duties of his office, however, he must qualify; that is, take an oath of office, and in most cases give a bond. In his oath of office he must swear to support the Constitution of the United States and that of the State of South Dakota, and to discharge faithfully the duties of his office to the best of his ability. When, from any cause, a vacancy in a township office exists, the vacancy is filled by the justice of the peace and the board of supervisors, who together choose some person to hold the office until the next annual meeting. All officers of the township are elected for terms of one year, except the justices and constables, elected for terms of two years, and the supervisors for terms of three years.

151. Board of Supervisors.—The supervisors of the township are three in number, one of whom must be designated on the ballot as chairman. The board is required to meet four times each year. It fixes and approves the bonds of all township officers, audits all accounts against the township, and draws warrants for the payment of the same. It acts as a township board of equalization, as a township board of health, and has charge of all township business not committed to other officers. It is required to report annually to the town meeting the financial condition of the town-

ship, together with the estimate of the expenses for the coming year. It acts also as a board of registration.

152. The Treasurer.—The treasurer receives all money of the township, and pays out the same only upon the warrant of the supervisors. Within five days previous to the annual town-meeting, he must make out a complete account of all money received and paid out by him as treasurer, and present the same at the meeting. One copy of his report must be filed with the town clerk, and one with the county auditor. His bond must be fixed by the supervisors at twice the amount of money he is supposed to handle. The counties, by a law passed in 1893, were given an opportunity to make the township treasurer the collector of taxes instead of the county treasurer. Few, if any, have done so.

153. The Clerk.—The clerk is the officer who has charge of the records, books, and papers belonging to the township. He keeps an account of all acts of the board of supervisors and of the town-meetings. He may administer oaths, and may take acknowledgments of deeds and other business documents. He is required to notify the clerk of the circuit court of the election of all justices of the peace and of all constables. The amount of his bond is determined by the supervisors.

154. The Assessor.—The assessor is a very important officer, for his duties require him to obtain a list of all taxable properties within the limits of his township. He is provided by the county commissioners with blanks for this purpose. He must require every person possessing taxable property within the

township to make a list of the same under oath or affirmation, and he is required to list such property at a fair valuation. He is also required to collect various facts in regard to wealth and population. His compensation is fixed at three dollars per day for the time necessary to discharge his duties. He must give a bond in such sum as may be fixed by the supervisors.

155. The Justice of the Peace.—Two justices of the peace are elected in each organized township. They cannot enter upon the duties of their office until they have filed with the county auditor a certified copy of the oath of office, and have given bonds in not less than five hundred dollars. The jurisdiction of the justice of the peace is limited, in civil cases, to matters, wherein the sum in controversy is not more than one hundred dollars, and in criminal matters to cases where the fine is not more than one hundred dollars, or imprisonment not more than thirty days. Justices of the peace may administer oaths, solemnize marriages, and take acknowledgments of deeds and other instruments. They are conservators of the peace, and may cause the arrest of any person violating the same. They must report quarterly to the county commissioners, who audit their accounts and allow their bills. All fines collected by them must be turned over to the county.

156. The Constable.—Two constables are elected in each organized township. The duty of the constable is to assist in preserving the peace. He serves all legal processes issued by the justice, makes arrests, and summons witnesses. He may arrest, without a

warrant, persons discovered by him in the act of violating the law. He is the ministerial officer of the justice's court, but he may also be called upon to serve papers issued by the county court. He is required to be present on election days for the purpose of preserving order around the polls.

157. The Overseer of the Highways.—One overseer of highways is elected at the annual town-meeting for each road district into which the township is divided. These overseers have charge of the repairs on roads and bridges, and must keep the same free from obstructions.

158. Compensation of Township Officers.—The town clerk and supervisors receive \$1.50 per day when attending to business within the township limits, and \$2 per day when their duties call them outside such limits. The assessor receives \$3 per day for the time actually employed, and the town clerk may, in addition to the above mentioned compensation, receive fees for filing papers and posting notices. The justice of the peace and constable are paid wholly by fees. The treasurer receives two per cent. of all township moneys paid into his hands.

CHAPTER XII

THE SCHOOL DISTRICT

159. Origin of the School District.—The school district was known first in fact, if not in name, in Massachusetts during colonial times. The first general law establishing schools was passed in that colony in 1647. By this a township was required to maintain a school whenever it had fifty householders, thus making the township practically a school district. The desire to bring the school as near as possible to the pupils led to the creation of additional schools in each township; and, finally, in 1789, the school district as distinct from the township was established by law. The school district thus became a body politic and corporate, practically independent of the township, having its own officers with special powers and duties. In the West, in sparsely settled districts, it has often happened that the organization of the school district has preceded that of the township, and has been itself a forerunner of township government.*

160. Kinds of School Organization.—In South Dakota, when the boundaries of the school district coincide with those of the township, it may happen that several separate schools will be established within it. These may all be under the authority and supervision of a single board of control. This is known as the township system of organization. These township

* See Hinsdale, *Horace Mann, etc.*, and G. H. Martin, *The Evolution of the Massachusetts Public School System*.

districts may be divided into several subdistricts, in each of which is a school. All of the schools of the township district are under the control of the school board, thus reducing the number of officers and unifying the system. When, however, the township is broken up into several independent districts, each being a body politic and corporate, and having its own officers unconnected with any other district in the township, the organization is known as the district system. In the district system the officers control but a single school, while in the township system the school board has control of all the schools which it may have been found necessary to establish within the township.*

161. The Two Systems in South Dakota.—The early development of the school system in this State was on the plan of district organization, but before the close of Territorial days an effort was made to introduce the township system. This resulted in a compromise, by which the district plan was retained in some counties and the township system adopted in others. The first State law on the subject, passed in 1891, permitted both systems to be retained, and also provided a plan by which township districts, upon petition and vote of the people, might adopt the district system; while, *vice versa*, one-school districts might combine and adopt the township system. The result has been that both systems continue to exist side by side. The law of 1901 also contains a provision for the continued existence of both.

* See *Report of Committee of Twelve on Rural Schools, N.E.A.* 1897, pp. 22, 23.

162. School District Defined.—A school district is a body politic and corporate for all school purposes. Its officers are separate and distinct from those of the township. The school meeting held in each district bears a general resemblance to the annual meeting.

163. Powers of Electors.—In addition to the election of all officers for the district, the voters assembled in school meeting have the following powers: (*a*) They may instruct the board regarding the management of the schools; (*b*) they may determine what branches of study shall be taught in addition to those prescribed by law; (*c*) they may determine the time school shall be held; (*d*) they determine the tax levy for school purposes, not to exceed two per cent of the taxable property in the district; (*e*) they may direct as to repairs and improvements, removal of school houses, erection of new ones, etc. It is the duty of the board to carry all such instructions into effect, provided that the instructions shall not prevent the members of the board from exercising a sound discretion in all matters pertaining to the duties of their office. The voters of a school district have the further power of authorizing the issue of bonds for the purpose of building and furnishing school houses, and of purchasing ground upon which to locate them. This adjustment of powers and functions is practically an application of the principles of the initiative and referendum.

164. The School Board.—In all districts the school board consists of three members, the chairman, clerk, and treasurer, one of whom is elected each year

at the annual meeting. The members of the school board are the executive officers of the democracy of the school district. Here, as in the township, is an excellent illustration of democratic organization and administration. Such democracy, however, is possible only in the smaller units of government.

165. Powers and Duties of the School Board.—Under the limitations stated in paragraph 163, the school board has the management of the schools and school property under the provisions of the law. They must organize and maintain schools for the accommodation of all the children of school age in the district. They are given power to provide for the transportation of children to and from the school where the distance is considerable. They may use their discretion as to the admission of non-resident pupils. The board is required to assist the teachers in the government and discipline of the schools. The board may suspend or expel from school any pupil insubordinate or habitually disobedient. Such suspension or expulsion, however, cannot be for a shorter period than ten days nor for a longer period than the current term. The board employs teachers for the schools, and has the right to dismiss a teacher at any time for plain violation of contract, gross immorality, or flagrant neglect of duty. The board may issue bonds for building and furnishing school houses when authorized to do so by a majority vote of the school electors at any regular or special meeting. When bonds are issued, the board is required to levy an annual tax sufficient to pay the interest and principal of the bonds when due. But no tax levy for this purpose can be greater than

fifteen per cent in any one year of the debt to be paid. Bonds so issued cannot be sold for less than their par value. All taxes voted by a school district are reported to the county auditor, and placed by the auditor on the annual tax list. All taxes for the support of the schools are levied by the school districts or their officers, save a tax of one dollar per capita levied by the county commissioners. The powers of the school board are thus seen to be both legislative and executive. In the dismissal of teachers and the expulsion of pupils, they possess judicial powers. Parties aggrieved at any action of the school board may appeal to the circuit court. A further appeal may be had to the supreme court of the State.

166. The Chairman.—In addition to his regular duties as a member of the board, the chairman presides at its meetings, acts as a judge of election in the district, and countersigns all warrants of the board. He is especially charged with the enforcement of the provisions of the law compelling the attendance of all children of school age. He receives two dollars for each regular meeting of the board that he may attend, but he may receive no other compensation for his services as an officer of the district.

167. The Clerk.—Besides acting as a regular member of the board, the clerk must keep a record of the acts of all school meetings in the district. He also acts as clerk of the board, and gives notices as required by law. He draws and signs all warrants for the payment of school money, and must give bonds for the faithful performance of his duties. He is authorized to take an annual enumeration of all

children of school age in the district, and must report to the county superintendent all receipts and expenditures of school money, the amount and condition of school property, all indebtedness of the district, the number of schools and teachers, and the attendance of all schools held in the district. He transmits all communications from the district to the county superintendent and county auditor, and receives all communications from them in behalf of the district.

168. The Treasurer.—The treasurer serves as a regular member of the board, and also receives, keeps, and pays out all the money belonging to the district upon the warrant of the board. He must report annually, to the school board and to the county superintendent, all receipts and expenditures of district money. Three copies of this report must be posted in the district. He must give bonds for the faithful discharge of his duties and the safe keeping of all school money that may come into his hands.

169. The Annual Election.—The annual election of school officers takes place on the third Tuesday in June. The district clerk must give ten days' notice of the meeting, specifying the time and place and the hours of voting. The chairman and clerk act as judges of election. In districts having one school, the polls must be open at two o'clock and be kept open for two hours. In districts having more than one school, they must also be opened at two o'clock, but must be kept open four hours. The voting must be by ballot, and the persons having the greatest number of votes shall receive the certificate of elec-

tion issued by the district clerk. In case of a tie, the choice is decided by lot.

170. Meetings of the School Board.—The school board is required to meet three times a year, viz., on the second Tuesday in July and the last Tuesdays in November and March. The clerk shall, however, call special meetings when requested to do so by a majority of the board. Written notice of a special meeting must be given to each member of the board.

171. Vacancies in School Offices.—Whenever a vacancy, by reason of death, resignation, or removal, occurs in the office of chairman, clerk, or treasurer of the school board, the vacancy is filled by the county superintendent, who appoints an officer to serve until the next annual meeting. The vacancy is then filled by election for the remainder of the term.

172. Compulsory Education.—A minimum attendance of twelve weeks per year, six of which must be consecutive, is required of every child between the ages of eight and fourteen years within the State. Attendance at a private school or private instruction for a like period will be accepted instead of attendance at the public schools. The law also provides for the arrest of truant children and their return to school.

173. School Finances.—The funds for the support of the schools are derived from various sources. Chief of these is taxation and the proceeds of the sale of the school lands. The school grant amounted to 3,521,400 acres, of which 2,828,320 acres belonged to the common schools. A minimum price for this land was fixed by the constitution, and the

money received from its sale constitutes a general fund to be forever devoted to school purposes. Only the interest of this fund can be spent. The county commissioners each year levy a tax of one dollar upon each voter in the county. In case of failure of any district to levy sufficient tax to support at least six months of school, the county commissioners are authorized to levy a tax sufficient for that purpose. All other taxes for the support of the schools are levied either by the school board or the electors in annual meeting. All money received from the State is divided each year among the school districts of each county according to the number of children of school age. This apportionment is made by the county superintendent.

174. Qualifications of the Teacher.—Teachers' certificates are of three grades. Applicants for first and second grade certificates must be at least eighteen years of age; those for third grade, seventeen. First grade certificates are issued by the State superintendent and are valid in any county in the State. The applicant must be of good moral character, must have passed a satisfactory examination in orthography, reading, writing, arithmetic, political and physical geography, English grammar, physiology, hygiene, history of the United States, civics, current events, book-keeping, American literature, drawing, and didactics. Second grade certificates are issued by the county superintendent, and are good only in the county in which they are issued and for a period of two years. The same subjects are included in the examination as for the first grade, excepting current events, American literature, drawing, physical geog-

raphy, and bookkeeping. Third grade certificates are valid only in the county where issued, and for a period of one year or less, at the pleasure of the county superintendent. Applicants for certificates of this grade are examined in orthography, reading, writing, arithmetic, hygiene, geography, English grammar, history of the United States, and didactics. Applicants for certificates of any grade must pay a fee of one dollar, to be deposited with the county treasurer to the credit of the institute fund.

175. Powers and Duties of the Teacher.—

Only persons possessing a certificate in force in the county where the teacher is to be employed can make a valid contract to teach. All contracts must be in writing, and must be signed by the teacher and at least two members of the school board. The contract must specify the date at which the school shall begin, the time for which it is to continue, the wages per month, and the time of payment. Two copies of the contract must be made, one to be retained by the district clerk, and one to be kept by the teacher. Certain conditions are understood to be a part of every teacher's contract, and need not be expressed. These are : (a) The teacher shall not hold school during any of the legal holidays ; (b) schools shall be adjourned during the session of the county institute ; (c) teachers shall receive into the school all pupils sent there by order of the school board ; (d) they shall send all notices and keep all records required by law ; (e) they shall classify their schools in accordance with the State course of study, and shall hold all examinations and make all reports required for this purpose.

Legal holidays in South Dakota are Decoration Day, Fourth of July, Thanksgiving Day, and Christmas. These days, however, count as part of the term, and the teacher draws pay for them, unless they happen to fall on Saturday or Sunday.

176. Revocation of Teachers' Certificates.—

The county superintendent may revoke any certificate held in his county, at any time, for any cause which, if known at the time the certificate was granted, would have prevented him from issuing it. Incompetency, immorality, intemperance, violation of the State law, cruelty, and neglect of duty constitute a sufficient cause at any time for revoking a certificate. The superintendent must act from personal knowledge or from competent evidence. If a first grade certificate is revoked, he is required to notify the State superintendent, who will notify all other county superintendents. When a certificate has been revoked, the holder must return it to the office of the county superintendent. In case of failure to return such certificate, the county superintendent must publish notice of revocation in the county papers.

177. Compensation of School Officers.—In each district the chairman receives \$2 for each regular meeting of the board attended by him. The clerk and treasurer each receives a salary of \$5 for each school under the charge of the board, but this salary shall in no case exceed \$25 per year. The clerk and treasurer receive \$1.50 additional for attending every meeting of school officers called by the county superintendent. No part of these salaries can be paid until the reports of the officers have been correctly made.

CHAPTER XIII

COUNTY GOVERNMENT

178. County Government in General. — The county is the local organization next above the township and the municipal corporations endowed with limited governmental powers. While matters of more immediate local interest are left to the townships, the county embraces a wider circle, though still preserving the principle by which the responsibility for good government rests upon the individual citizen and the local community. The township and county, as organized in this country, represent the extreme of decentralized government, and give the widest scope for the intelligent activity of the people in all affairs of local government.

179. The County Defined. — Each organized county is a body corporate for civil and political purposes, and as such may sue and be sued and hold property, both real and personal. It is a body politic, in that it is a union of the people for political purposes; it is a body corporate, in that its people, by their union, stand before the law possessed of the rights and privileges of an individual in the transaction of business and holding and disposing of property.

180. Organization of the County. — Upon the petition of one hundred and fifty voters in any unorganized county, the governor of the State is authorized to call an election in such county for the election of county officers, and the selection of a temporary

location for the county seat. When the officers thus elected have qualified and assumed their duties, the county is said to be organized.

181. County Officers.—The officers of the county are the commissioners, the register of deeds, the clerk of the circuit court, the treasurer, the sheriff, the coroner, the superintendent of schools, the surveyor, the county judge, the justices of the peace, and constables. An assessor is also elected in counties where township organization does not exist. The term of office of all county officers excepting commissioners is two years.

182. The County Commissioners.—The number of commissioners is usually three, but may be five upon petition of one-third the legal voters of the county. They are elected by the electors of the county at large for a term of four years. The board meets regularly four times a year, in January, April, July, and October. At the first meeting for each year, the board elects one of its members chairman. The board is charged with the general administration of the affairs of the county, but has only such powers and duties as are prescribed by law. It levies taxes, equalizes the assessment of property, has care of county roads and bridges, and the management of all the county property. The board audits the accounts of all county officers having the care, management, and disbursement of public funds. It issues all warrants for the payment of money, and has charge of all public improvements made by the county. In all cases of extraordinary expenditure, or of issuing bonds for any purpose, except for the refunding of the outstanding warrants, the board is required to submit

the matter to a vote of the people. The commissioners canvass the election returns of the county in conjunction with the auditor; and, in conjunction with the superintendent of schools, change the boundaries of school districts. They institute and prosecute all actions at law in behalf of the county. They have charge of the construction and maintenance of the public works of irrigation in the county, the sinking of artesian wells, building of reservoirs, etc. The care of the county poor and the maintenance of the county poor-house is committed to the board of county commissioners. An appeal to the circuit court can be taken from any decision of the commissioners.

183. The Register of Deeds.—This officer keeps a full record of all deeds, mortgages, bills of sale, and all instruments authorized by law to be filed with him.

184. The Clerk of the Circuit Court.—The clerk of courts is elected in each county at the regular election. He is the recording officer of the court, administers oaths, keeps a register of all cases coming before the circuit court for trial, records all judgments, and assists in the drawing of juries. He also acts as clerk of the county court.

185. The Auditor.—The auditor is clerk of the board of county commissioners, and keeps a full record of their proceedings; he draws all warrants issued by the board for the payment of money, and, when they are signed by the chairman, attest, them by his signature. He keeps an account with the treasurer, and also keeps a record of all school district and township money. He has the custody of the seal of

the county. He issues certificates of election to the officers of the county and members of the legislature. He makes an abstract of the votes at all elections, and forwards the same to the Secretary of State. He has charge of the leasing of school lands, and makes a record of all lands sold, and reports to the commissioner of school and public lands. He acts as clerk of the county board of equalization. He makes out tax lists, and delivers copies to the township, town, and city treasurers of the county. On petition, he is authorized to call special elections.

186. The Treasurer.—The treasurer keeps account of all the money belonging to the county, is collector of taxes, and pays out money upon warrant of the county commissioners. He assists also in the drawing of juries.

187. The Sheriff.—The sheriff is peace officer of the county; he arrests criminals, executes writs, warrants, and serves summons, subpoenas, and other legal papers. He is an officer of the circuit court, and attends its sessions. He has charge of the county jail, has custody of the county prisoners, and produces them in court. He gives notice of elections, posts notices for the auditor, and assists in the drawing of juries. He is required to keep his office at the county seat.

188. The Coroner.—Inquests upon the bodies of persons supposed to have died by violence or unlawful means are held by the coroner. He is the only officer of the county authorized to serve papers on the sheriff. The coroner may perform the duties of sheriff, in case of the incapacity of that officer or a

vacancy in his office. Usually, however, a deputy sheriff performs the duties of sheriff when that officer is not able to do so.

189. The Superintendent of Schools.—The superintendent is charged with the general supervision of the schools of the county, and must visit each school at least once a year. He is the medium of communication between the subordinate school officers and the State department. He may be consulted by school officers on all administrative matters, but his action is purely advisory, and he possesses no judicial authority in such cases. He examines teachers, grants certificates, and may revoke a teacher's certificate for cause. He keeps a record of his official acts, and makes an annual report to the State superintendent. He receives and files the reports of district school officers, examines their accounts, and advises and assists them in the performance of their duties. All appeals from the decisions of district school officers are to the circuit court. He is president of the county board of education.

190. The State's Attorney.—The State's attorney has charge of all cases in which the county is a party, and is the legal adviser of the county commissioners and other civil officers of the county. He is required, in case of crime committed within the county, to file with the court a proper information upon which the accused is brought to trial, as in case of indictment by a grand jury. In case the grand jury is summoned, he must, upon its request, attend its sessions, to furnish them advice upon legal matters, and to issue subpoenas and other processes to secure the attendance of witnesses. Whenever there shall ap-

pear to be reasonable cause therefor, he shall, upon the request of fifteen resident tax-payers of the county, begin and prosecute civil actions against the county commissioners, or any one of them, for malfeasance in office or misappropriation of public funds.

191. The Surveyor.—The surveyor makes official surveys of lands, roads, and boundaries within the county.

192. The County Judge.—This officer is the presiding judge of the county court. In counties having a population of 20,000 or over, the jurisdiction of this court is concurrent with that of the circuit court in all that class of civil cases wherein a justice of the peace may have jurisdiction, and the amount involved does not exceed \$1,000; in criminal matters, it extends to all cases of misdemeanor, and in all probate matters, guardianship, and settlement of the estates of deceased persons, it has exclusive original jurisdiction. In counties with a population less than 20,000, the county court has jurisdiction only in probate matters, cases of guardianship, and the settlement of estates. Prosecution before this court is by information.

193. The Assessor.—In counties having territory without township organization, a county assessor is elected, who, with his deputies, makes out the assessment list for all such unorganized territory. Where counties have township organization, the township assessor makes out the assessment list and returns it to the county auditor, after equalization by the township board of supervisors. The county assessor returns his list directly to the auditor.

194. The County Board of Health.— The State board of health appoints in each county two physicians, who, with the State's attorney, constitute the county board of health. Their general powers and duties are nearly the same as those of the State board. They are charged with the care of the general health conditions of the county, and are empowered to take measures to prevent the spread of infectious diseases.

195. The County Board of Education.— This board is composed of the county superintendent of schools, the presidents of boards of education of all cities and towns, the county auditor, the State's attorney of the county, the county commissioners, and one person from each commissioner's district, who shall be selected by the members of the school boards of such district. The duties of the board are the selection of the text-books to be used within the county. The first meeting of these boards was on the second Tuesday of June, 1897, and they are required to meet every five years thereafter.

196. Compensation of County Officers. — The compensation of county officers is not uniform throughout the State. County commissioners receive \$3 per day and mileage (5c per mile). It is provided, however, that no one of them may receive more than \$125 a year for his services, nor more than \$40 a year as mileage. The salaries of the register of deeds and county auditor are fixed according to the assessed valuation of the county, and also in proportion to population. In no case can their salaries exceed \$1,500. The treasurer receives a percentage of all taxes collected, but his salary may not

exceed \$1,500. The superintendent of schools is paid according to a scale fixed by the valuation of property and the population. His salary is limited to \$1,500. The clerk of courts is paid by fees, but these may not amount to more than \$1,200. In counties of less than 20,000 inhabitants, the county judge receives a compensation varying from \$200 to \$600, according to population; in counties of more than 20,000 inhabitants, he may receive as high as \$1,800. The salary of the State's attorney is fixed by the county commissioners. It may not, however, be less than \$400. The county assessor receives \$3 per day for the time actually spent in the public service. The sheriff, coroner, surveyor, and justice of the peace receive only fees for their services.

196a. County Library Board.—By an act of the Legislature of 1901 there was created a county library board with the duty of establishing and maintaining school libraries. This board consists of the county superintendent, county auditor, State's attorney, and all superintendents of city schools, and all principals of town and village schools, employing more than one teacher, in the county. The board is charged with the duty of expending the money set apart for the purchase of books and providing for the circulation of the books among the schools of the county. Each county treasurer is required to withhold from the school funds of the county an amount equal to ten cents per capita for each person of school age in the county. This money constitutes a fund to be used by the library board in the purchase of books. The members of the board receive no compensation for their services. The clerk of each school district is required to act as librarian for the library provided in that district.

CHAPTER XIV

MUNICIPAL GOVERNMENT—THE CITY AND TOWN

197. Origin of Town and City Government.—Modern municipal government is a development from the local government of the township. By the centralizing of population at any convenient place in the township (sometimes at the center), there was created a necessity for a more complete and extended form of government than that afforded by the township. If we turn to English history, we find that the government of boroughs and cities in England is an outgrowth of the Anglo-Saxon institutions of local government. The massing of population for the purpose of defense or trade gave rise to the town, with the local institutions of the township and the hundred. If the town developed so as to include several hundreds, then it was analogous to the shire and took to itself the institutions of the shire. It must not be understood, however, that American local town and city government is a development from the government of the township. The towns and cities of the Colonies copied largely the English borough and city government of that day. From these models, more or less defective, the municipal system of this country has been drafted, modified to some extent by the formative elements that existed here. The result to-day is far from satisfactory, for nowhere else is representative government so conspicuous a failure as in our municipal system. As yet South Dakota has not felt these

evils to any considerable degree, owing to the fact that her cities have not become sufficiently large.

198. Classes of Cities.—There are three classes of cities in this State. Those having more than 10,000 inhabitants are known as cities of the first class; those having less than 10,000 and more than 2,000, as cities of the second class; and those having less than 2,000, as cities of the third class. One thousand inhabitants are required before a city government can be adopted.

199. Incorporation.—Any town having not less than 1,000 inhabitants may incorporate as a city upon a majority vote of its electors being cast in favor of such action. A part of the cities of this State are organized under special charters, *i.e.*, charters granted by the legislature especially for each city. At present any town may be incorporated under the general law, which provides for organization as a city whenever a majority of the legal voters shall so elect.

200. Departments of City Government.—City government is more complete in itself than any other form of local government, and the city is a virtual miniature of the State. The charter under which it operates, and which defines its system of government, is its constitution. It has three well-marked departments, *viz.*, legislative, executive, and judicial. The city council constitutes the legislature; the mayor, with the other administrative officers, the executive department; while the judicial department is vested in the police and city justices.

201. Officers of the City.—The officers of the city consist of the mayor, aldermen or councilmen, treas-

urer, auditor, city attorney, and city engineer. The mayor, aldermen, assessor, treasurer, the city justice of the peace, and the police justice are elected by the people for terms of two years. The other officers are appointed by the mayor with the consent of the council. They may be removed by the mayor, but such action must be reported to the council with the reasons upon which it is based. The salaries of all officers are fixed by the council.

202. The Mayor.—The mayor must be a qualified elector, and a resident of the city for nine months prior to his election. He presides over the deliberations of the council, and has the veto power over all legislation of that body. Within the city, he has the same power that the sheriff has in the county for the suppression of disorder and the preservation of the peace. He is the commander of the militia of the city, and may call it out to enforce the laws and ordinances or to preserve the peace. He can release any person imprisoned for violation of the city ordinances. In cities of the first class, the mayor's salary is not to exceed \$600 per year; in cities of the second class, not to exceed \$300; and in cities of the third class, not to exceed \$30.

203. The Council.—The council consists of not less than six members elected by wards, *i.e.*, districts into which the city is divided for election purposes. In cities having more than 10,000 inhabitants and not exceeding 15,000, the number of aldermen is twelve, and for every additional 10,000 inhabitants above 15,000 two additional aldermen are allowed in addition to the twelve. The council holds regular meet-

ings on the first Monday of every month. In cities of the first class, the aldermen may receive a salary not to exceed \$100 per year. The council has control of the finances and all property of the city, can appropriate money, levy and collect taxes for city purposes, order the payment of money, borrow money, and issue bonds in the name of the city, and issue licenses. The council has control of all streets, bridges, and public grounds, and may provide for the erection of public buildings. It has general legislative authority in all public matters and directs all public improvements and repairs. It may construct water-works, and provide all needful fire apparatus. It makes all police regulations, and confirms all appointments made by the mayor. It may appoint a board of health, and may provide for the inspection and sealing of all weights and measures used in the city. It possesses the right of eminent domain. Thus, the council exercises both legislative and administrative functions.

204. The Auditor.—The auditor has charge of the seal of the city, and all papers and books belonging to it. He is the recording officer of the council, and keeps copies of all papers filed in his office. He draws and countersigns all warrants issued by the council for the payment of money. The auditor, mayor, and assessor constitute a board of equalization. All claims against the city, before being presented to the council, must be audited and adjusted by him. He is required to keep a full and complete record of the financial transactions of the city, showing receipts and expenditures. He reports to the council twice a year

upon the financial condition of the city. He places before the city council the annual estimate of the amount of money required to conduct the government for the ensuing year.

205. The Treasurer.—The treasurer receives all city moneys, and pays out the same upon warrants issued by the council, signed by the mayor and countersigned by the auditor. He must make a settlement with the auditor monthly, and must keep all funds in his hands belonging to the city entirely distinct from his own money, or that of other parties. He must give a bond in a sum equal to the amount of the city tax and all special assessments. His salary cannot be made to exceed \$600, in cities of the first class; \$400, in cities of the second class; and \$200, in cities of the third class.

206. The City Attorney.—The city attorney is required to perform all professional services incident to his office and to furnish a legal opinion upon any matter submitted by the council. His salary is not to exceed \$1,200, in cities of the first class; \$800, in cities of the second class; and \$200, in cities of the third class.

207. The Assessor.—The assessor's duties are, in the main, the same as those of the township assessor. He reports all taxable property to the auditor.

208. The City Engineer.—The city engineer is required to be a practical engineer and surveyor. His duties are prescribed by the council, by ordinance.

209. The President and Vice-President of the Council.—These officers are elected by the council at the first annual meeting. The duty of the president

is to preside in the absence of the mayor, and during the absence of the mayor from the city or his temporary disability he becomes acting mayor. The vice-president, in like manner, performs the duties of mayor in the absence or disability of both the mayor and the president of the council.

210. The Chief of Police.—The chief of police, in general, performs the duties of a policeman, and superintends the police force of the city. His duties are prescribed by the city council, by ordinance.

211. The Justices of the Peace.—There are two justices of the peace in the city, known as the police justice and the city justice. They have jurisdiction over all offences against the city ordinances, and concurrent jurisdiction with other county justices over all other cases both criminal and civil coming within a justice's authority.

212. Relations of City and County Government.—The government of the city touches that of the county at many points. The tax levied by the city officials is collected by the county treasurer and by him paid over to the city. The county may, however, make the city and township treasurers collectors of taxes. The assessment of property, after being equalized by the city board of equalization, goes to the county board. In matters of election the city is simply an election precinct of the county. In matters of taxation for general purposes, the citizens of the city are taxed as other citizens of the county. The city votes for a member of the board of county commissioners, and is thus represented upon that board. In all county elections the city is regarded as an inte-

gral part of the county, and the city electors vote for all county officers. The city is, thus, far from being an independent government in itself.

213. Town Government.—The second form of municipal government in this State is that of the town. The government of the town is a grade above that of the township, in that its functions are more extensive and distinct. The town, however, lacks the distinct executive and legislative departments found in the city, these being combined in the board of trustees of the town. The government of the town is thus intermediate between that of the township and the more elaborate form of the city. Any village can secure incorporation upon petition to the county commissioners, who may order a vote to be taken in the proposed town on the question of incorporation. If the vote be in favor of incorporation, an election is called and town officers are elected. When they have qualified and assumed their duties, the town is said to be incorporated. The town then becomes a body politic and corporate recognized by law.

214. Town Officers.—The officers of the town consist of the trustees, the clerk, marshal, treasurer, assessor, and justices of the peace. These are elected for terms of one year. The president of the board of trustees is elected by that body, which also appoints fire wardens and street commissioners. Any vacancy in an elective office is filled until the next annual election by the board of trustees. The salary of all officers is fixed by the board of trustees.

215. The Board of Trustees.—The board of trustees may consist of not less than three nor more

than seven members, one for each district into which the town is divided. The legislative authority of the town is vested in this body, which has power to make such by-laws and ordinances as may be necessary. Such ordinances must not, however, be in conflict with any laws of the State. The board has power to levy all taxes for town purposes; to authorize and regulate all public improvements; to have control of all town property; to provide means for preserving the peace; to purchase, hold, and convey such real estate as may be necessary for town purposes, and, in general, to manage the affairs of the town. The board acts also as a board of equalization. All warrants for the payment of money are drawn by the board, signed by the president, and attested by the clerk.

216. The President of the Board of Trustees.—The president presides at all meetings of the board, and performs such other duties as naturally belong to his office. He must be a member of the board.

217. The Clerk.—The clerk is the recording officer of the board of trustees. His duties are similar to those of the auditor of a city. He attests the signature of the president to all warrants for the payment of money.

218. The Marshal.—The marshal is the peace officer of the town, and acts under the direction of the board of trustees.

219. The Treasurer.—The treasurer receives the money of the town, and pays the same out only upon the warrant of the board of trustees. He keeps the

accounts of the town. His books must be examined once a year by the board of trustees.

220. The Justice of the Peace.—The justice of the peace has exclusive jurisdiction over all offences against the ordinances and by-laws of the town, and concurrent jurisdiction with all other justices in all civil and criminal cases arising within the county in which the town is situated.

221. The Assessor.—The duty of the assessor is to assess the taxable property of the town under rules prescribed by the board of trustees.

222. The Street Commissioners and Fire Wardens.—These officers are appointed by the board of trustees and perform such duties as may be required of them by the board.

CHAPTER XV

THE STATE GOVERNMENT: LEGISLATIVE DEPARTMENT

223. The State, County, and Township.—We are now in a position to see the relation of the subordinate units of government. The township, in its political functions, is practically a subdivision of the county. By means of it, many of the affairs of local government are brought directly into the hands of the people. The county is a political subdivision of the State government. The machinery of our entire governmental system is arranged upon the principle of leaving all local administration with the subordinate units of the organization, thus giving the people almost direct control of local affairs. The township is purely democratic in its organization, and the county is so immediately representative that very full expression is given to popular wish and sentiment in the administration of local affairs. We are now able to understand more fully the significance of the term “decentralized” as applied to our government. The broad distinction between the government of the township and of the county, and that of the State, is the fact that in the first two units the executive and legislative functions are not separate and distinct, while in the latter there is a clear distinction in the departments of government which exercise the legislative, the executive, and the judicial functions. By a little analysis, we can see that the county exercises the same variety

of functions of government that the State does. In the county we do not find a formal written constitution as in the State, but we may say that the laws, determining the form, delegating the powers, and limiting the functions of the county government stand in the place of a constitution. In city government, also, the charter granted by the legislature stands in place of a constitution.

224. The Constitution.—A constitution determines the form and character of a government, defines and limits its powers and functions, and creates the larger machinery of the State. We have seen that our State constitution proceeds from the people, and is thus a grant of power from this primary source of all political authority. In our plan of government, the primary authority of the State rests with the people, and there can be no powers exercised which have not been directly or indirectly granted through the constitution. The constitution of our State is a voluminous document, consisting of twenty-six Articles, including the Schedule and Ordinance which provided for the manner of voting upon its adoption, and inaugurating the government. A Bill of Rights, consisting of twenty-seven sections, is incorporated in the constitution. The constitution contains much that is purely legislative, such as duties of State officers, county and township organization, and matter of a similar character that might have been left to the action of the legislature.

225. Departments of the State Government.—The State, as we have seen, differs from the other units of local government in having the three depart-

ments of government—the executive, legislative, and judicial, clearly defined and separated. The relations of these departments are an interesting study. In both the State and the Nation the purpose has been to make these three departments distinct and independent, and yet to secure such relations between them as to prevent the undue and improper exercise of their powers. Herein is embodied the theory of checks and balances, which is a prominent characteristic of American government. The placing of absolute and unlimited power in each of the three departments would make a government dangerous to the liberties of the people. The legislative department is limited in the exercise of its functions by the veto power in the hands of the executive, and by the authority vested in the supreme court to declare laws unconstitutional. The appointments of the executive are made “with the advice and consent of the senate;” and, besides this, both the executive and judicial officers of the government are liable to impeachment by the lower house of the legislature, and, if found guilty upon trial, can be removed from office. The fact that all judges of the United States courts are appointed by the executive head of the Government with the advice of the National Senate, tends to prevent the arbitrary and tyrannical exercise of judicial authority.*

* John Adams enumerated the checks and balances in our government, in general, as follows: “First, the States are balanced against the General Government. Second, the House of Representatives is balanced against the Senate, and the Senate against the House. Third, the executive authority is in some degree balanced against the legislature. Fourth, the judicial is balanced against the legislature, the executive, and the State governments. Fifth, the Senate is

226. The Legislature. — The State legislature consists of a senate and house of representatives, the former having forty-four members, and the latter eighty-eight. The legislature meets biennially in odd-numbered years, as '95, '97, '99, etc. The regular session begins on the first Tuesday after the first Monday in January following the date of election, and is limited to sixty days, except in cases of impeachment.

227. Qualifications of a Senator. — To be eligible to the office of State senator a person must be a qualified elector of his district, twenty-five years of age, a citizen of the United States, a resident of the State for two years next preceding his election; he must not hold any lucrative office under the United States or the State, and must not have been convicted of any infamous crime. Senators are elected by popular vote, by districts. A senator is required to take oath to support the constitutions of the State and of the United States, that he will faithfully discharge his duties, that he has not secured his election by bribery, that he has not accepted and will not accept any consideration from any corporation, company, or person for his action on any measure. He is paid

balanced against the President in all appointments to office and in all treaties. Sixth, the people hold in their hands the balance against their representatives by periodical elections. Seventh, the legislatures of the several States are balanced against the Senate by sextennial elections. Eighth, the electors are balanced against the people in their choice of President or Vice-President." — Letter of John Adams to John Taylor, quoted by Tiedeman in *The Unwritten Constitution of the United States*, page 159. The eighth check enumerated by Mr. Adams is inoperative by the practical failure of the electoral plan for election of President and Vice-President to be more than a popular election.

five dollars per day for his services, and can not receive compensation for more than sixty days. He is not eligible, during his term of service, to any office in the State created within that time. He is elected every even year, and is privileged from arrest, except for treason, felony or breach of the peace, during time of his attendance upon sessions of the legislature.

228. Qualifications of a Representative.—The qualifications of a State representative are the same as those for senator, and the general provisions relative to election and service as a member of the house of representatives are not different from those governing the election and service of a senator.

229. Organization of the Senate.—The number of members of the senate is fixed by the constitution at not less than twenty-five, nor more than forty-five. At present the number is forty-four. The presiding officer of the senate is the lieutenant-governor, but he has no vote, except in case of a tie. The other officers are substantially the same as those of the house. The senate differs from the house in its functions, only in that it has power to confirm or reject the appointments of the governor.

230. Organization of the House.—The number of the members of the house is fixed by the constitution at not less than seventy-five nor more than one hundred and thirty-five. At present the number is eighty-eight. The house chooses its own officers and employés, and fixes their pay. The house has no powers of legislation not possessed by the senate. Its officers are usually a speaker, chief clerk and assistants, sergeant-at-arms, door-keeper, postmaster, chap-

lain, messengers, and pages, besides numerous bill clerks, engaged in engrossing bills.

231. The Speaker of the House.—The presiding officer of the State house of representatives is known as the speaker, and is elected by the house. He is the most important legislative officer in the State, and exerts a great influence in molding and directing legislation. The formation of house committees devolves upon him. Frequently his influence is able to facilitate the passage of a measure, at other times to assure its defeat. The house differs from the senate chiefly in that it elects its own presiding officer.

232. Representative and Senatorial Districts.—Districts for the election of representatives and senators were first established by the constitution, there being forty-eight of the former and forty-one of the latter. These districts can be changed at any time by law.

233. The Course of Legislation.—A bill is a draft of a proposed law. It may be introduced by any member. After being read the first time, it is printed and referred to its appropriate committee for consideration. The constitution requires that no law shall embrace more than one subject, and that this shall be fairly expressed in its title. The enacting clause of a bill follows the title, immediately preceding the body of the bill, and runs as follows: "Be it enacted by the Legislature of the State of South Dakota." The presiding officer of each house is required to sign all bills and resolutions that have passed both houses. This he must do in the presence of the house after announcing his purpose, and every

such act and announcement is made a matter of record in the journal of that house. Every bill, unless the rules are suspended by a two-thirds vote, must be regularly considered by a committee and reported upon, favorably or unfavorably, before it is finally acted upon by the house. When a committee fails or refuses to report a bill it is said to be "pigeon-holed." The constitution requires that a bill shall be read three times in the hearing of the house before the vote is taken upon its final passage. The first and third readings must be in full, while the second may be by title.

The formal steps in the regular consideration and passage of a bill, including consideration by the governor, are as follows :

1. First, reading in full, and reference by the presiding officer to its appropriate committee. The bill is then printed and read the second time before being delivered to the committee. The second reading is by title, informal and unimportant.

2. After consideration by the committee, the bill is reported back to the house with a recommendation that it be or be not passed, or with amendments. If the committee's report is favorable and the house accepts it, the bill is placed on the calendar, or list, of bills for third reading and consideration by the house. Frequently the consideration of a bill is made a special order for a certain day and hour, at which time no other business can be done.

3. Bills are frequently considered by a legislative body in committee of the whole, that is, the whole body sitting as a committee. This relieves the house

from its strict rules of procedure and makes its action, for the time, wholly informal and subject only to the rules of general parliamentary procedure. The presiding officer calls upon some other member to preside at such times in order to change completely the character of the body, and give it the form of a large committee. When the motion to rise and report prevails in the committee, the presiding officer of the house again takes the chair. The chairman of the committee of the whole then makes a report of the proceedings of the committee, which report must be acted upon by the body in a formal way.

4. After a bill has been considered and discussed by the house, it is passed as amended (if amendments have been made, otherwise in its original form) to be engrossed; that is, neatly rewritten. It is then placed upon the list of bills for third and final reading.

5. After the third reading of a bill, the question is taken upon its final passage. Frequently the defeat of a measure at this stage is secured by a motion to "strike out the enacting clause," leaving it a headless and worthless trunk. Of course, the majority that could thus defeat a measure could also defeat it upon final vote in the regular way.

6. All bills passed by one house are sent to the other and are considered by it in the same formal way, going through exactly the same steps as in the house where they originate.

7. After passing both houses of the legislature, a bill is then enrolled, that is, neatly written upon parchment or durable paper, and is, in this form,

signed by the presiding officer of each house while the body is in session.

8. The final step before a bill can become a law is usually the approval of the governor. He may, however, refuse to sign a bill, in which case he returns it, together with his objections in writing, to the house where it originated. This is called the veto of the bill. The bill may still become a law by receiving the two-thirds vote of each house. It is then said to be passed over the veto. If the governor fails to sign a bill within three days (Sunday excepted) after it is presented to him, it becomes a law, unless the legislature, by its adjournment, prevents its return. In the latter case it becomes a law ten days after adjournment, unless the governor files objections within that time in the office of the secretary of State. The governor may veto any item of an appropriation bill. The item thus vetoed can be made a law by being passed by a two-thirds vote of both houses of the legislature.

234. An Emergency Clause.—The constitution provides that “no act shall take effect until ninety days after the adjournment of the session at which it is passed unless in case of an emergency.” Where it is desirable to give a law immediate effect an “emergency clause” is attached, declaring that an emergency exists which requires immediate action, and then, by a two-thirds vote of each house, the law can be made immediately operative upon approval by the governor or passage over his veto. Otherwise the law is not in force until July 1, following the adjournment of the legislature.

235. Popular Sentiment and Legislation.—Per-

sons interested in the passage of certain measures by the legislature can be heard before the committees having them in charge and under consideration. This is one of the ways in which a lobbyist can legitimately work for the passage of a bill. Sometimes committees desire to hear the opinions of experts and other well-informed persons upon the merits of a proposed measure, and they are heard in the committee room. The term "lobby" is sometimes used in a bad sense, meaning that dishonest and corrupt means are used to secure the passage of a measure.

236. The Committee System.—The number of bills introduced into a legislative body at any one session is so great that it is practically impossible for either house to give them proper consideration without some system of division of labor. The members of each house are divided into small groups known as committees. In the house this is usually done by the speaker, in the senate sometimes by the president, and sometimes by the body itself. Members are placed upon committees with due consideration for their preferences and their ability to consider and act upon certain kinds of legislative measures. It is very unusual for a bill to be acted upon without first passing through the hands of a committee, on which are those supposed to be best able to judge of its merits and to suggest alterations. The committee system thus used in legislation is supposed to be purely of American origin, at least in its most important features. The "standing" or permanent committees are announced during the first days of the session. Among the important com-

mittees usually found in the houses of the State legislature are the judiciary committee, to which are referred all bills relating to courts and the administration of their business; the committee on education, to which are referred all questions of schools and their administration; the appropriations committee, whose duty it is to make recommendations as to the amount of money to be expended for public purposes. Committees on railroads, revenue, elections and suffrage, cities and towns, public buildings, agriculture, are others of the important committees usually maintained.

237. Special Legislation.—The legislature is prohibited from enacting any special or private law in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person heir-at-law to another.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Incorporating cities, towns, or villages, changing charters of incorporated cities, or altering their streets or plats in any way.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the State.
8. Remitting fines, penalties, or forfeitures.
9. Granting to an individual, association, or corporation any special or exclusive privilege, immunity, or franchise whatever.
10. Creating, increasing, or decreasing fees, percentages, or allowances of public officers during the

terms for which such officers are elected or appointed.

11. Providing for the management of common schools.

237a. Initiative and Referendum.—The Legislature of 1897 proposed an amendment to the Constitution providing for the application of the initiative and referendum to all legislation. This was adopted by popular vote at the next general election. By this amendment “The people expressly reserve to themselves the right to propose measures, which measures the Legislature shall enact and submit to a vote of the electors of the State; and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the State before going into effect.” The referendum cannot be applied to laws necessary for the immediate preservation of the public peace, health or safety, and for the support of the State government and its existing public institutions. Not more than five per cent of the qualified electors of the State are required to invoke either the initiative or the referendum. The veto of the executive cannot be exercised upon measures referred to a vote of the people. This use of the initiative and referendum applies to municipalities also. A decision of the Supreme Court holds that the referendum cannot be applied to laws containing an “emergency clause.”* In towns and cities there has been a limited use of the referendum with satisfactory results.

* State *ex rel.* Savin *et al.* vs. Bacon *et al.*, N. W. Reporter, Vol. 85, pp. 605 ff.

CHAPTER XVI

THE EXECUTIVE DEPARTMENT

238. The Governor.—The executive power of the State government is vested in the governor, who, in administrative functions, is aided by other officers. To be eligible to the office of governor, a person must be a qualified elector, a citizen of the United States, thirty years of age, a resident of the State for two years next preceding his election, and must not hold any other office. The governor is commander of the military forces of the State, and may call them out to repel invasion, suppress insurrection, or to execute the laws. He may, if necessary, convene the legislature in extra session, recommend measures for the consideration of the legislature, and may remit fines, and grant reprieves and pardons. All bills passed by the legislature must be submitted to him before they become laws, and he may sign or veto any bill or disapprove any item in an appropriation bill. He is charged with the enforcement of the laws. He appoints various State officers, as provided by the constitution or by statute. He is authorized to fill a vacancy in any State office when no other mode is provided by statute or by the constitution for filling such vacancy. By the Constitution of the United States, the governor is given power to appoint senators in cases of vacancies occurring in the recess of the legislature, but such an appointment is valid only

until the next meeting of the legislature. If the legislature fail to elect, the governor would not have the right to make an appointment, and the State would, in such case, go without representation.

239. The Lieutenant-Governor.—The lieutenant-governor presides over the senate. In case of the death, resignation, failure to qualify, absence from the State, removal from office, or other disability of the governor, he assumes the duties and powers of that officer. The qualifications for this office are the same as those for governor.

240. The Secretary of State.—This officer has custody of all State papers, including the originals of all laws, keeps the State seal, and has charge of the Capitol and grounds. He seals documents when necessary, records all appointments and commissions issued by the governor, furnishes certified copies of State papers, prepares the rolls of members of both houses of legislation, has supervision of corporations, issues articles of incorporation, and supervises the printing and sale of all public documents.

241. The Auditor.—This officer is the general accountant of the State. He keeps accounts of all appropriations and all warrants issued, audits all bills, and draws warrants in payment of the same. He is a member of the State board of equalization, and the State board of canvassers.

242. The Treasurer.—The treasurer has custody of all State money, and pays out the same on the warrant of the auditor. He can, however, pay money for the redemption of bonds and interest on bonds and warrants without the auditor's warrant. The

treasurer is required to give bond in large amount for the safe keeping of the public money. He is required to make monthly settlements with the auditor, and thus these officers are a check upon each other.

243. The Superintendent of Public Instruction.—This officer has charge of the common school system of the State. He issues State certificates and diplomas, prepares the examination questions for county examinations of teachers, and makes a biennial report to the governor regarding the condition of the common schools. He is charged with the supervision of the county superintendents, prescribes rules and regulations for holding county normal institutes, and appoints normal institute conductors. He has no authority or voice in the management of the State institutions of higher education.

244. The Commissioner of School and Public Lands.—He has charge of the sale and leasing of the school and other State lands. He also apportions to the various counties the money received from the leasing of school lands, and the interest on the school funds arising from the sale of these lands.

245. The Attorney-General.—This officer prosecutes all actions and proceedings in the supreme court, civil or criminal, in which the State is interested as a party. He gives legal opinions on all matters submitted by the legislature, governor, auditor, treasurer, superintendent of public instruction, and railroad commissioners. He prepares contracts and legal forms for such officers. He consults and advises with State's attorneys, when requested by them, on all matters pertaining to their office.

246. The Commissioner of Labor Statistics.—This officer has authority to investigate the conditions of labor within the State, and he is required to prepare statistics relative to labor that shall be a means of determining proper legislative action relative thereto. He is required to make a biennial report to the governor.

247. The Public Examiner.—This officer is appointed by the governor for a term of two years. He has supervision of the accounts of all public institutions, State and county officers, and all corporate institutions, as banks, loan and trust companies, etc.

248. The Inspector of Mines.—He is appointed by the governor, and his duties are the inspection of all mines in the State to ascertain their condition as regards safety, ventilation, etc. His term of office is two years. He is required to report annually to the governor all mine accidents occurring during the year, and such statistics as will tend to promote the mining industry of the State.

249. The State Geologist.—This officer is appointed by the board of regents of education. His duties pertain to the making of geological surveys of the State and investigations of its geological formations. At present (1901) the office is held by the professor of geology in the State University.

250. The Engineer of Irrigation.—The office described by this title was abolished by the legislature of 1897, but the duties of the office were transferred to the State Agricultural College, to be performed by an instructor selected by the governor. These duties are to have charge of the development of a system of

irrigation within the State by means of artesian wells, dams, reservoirs, or other methods that may be found practicable. An annual report of this work is required to be made to the governor.

251. The Inspector of Oils.—He is appointed by the governor, and is required to inspect all illuminating oils offered for sale in the State, and attest their quality by his stamp. His term of office is two years.

252. The Commissioner of Insurance.—This officer is appointed by the governor for a term of two years. His duties are: (1) To see that all laws of the State relating to insurance are faithfully executed; (2) to keep a complete record of the insurance companies doing business in the State and receive and file the reports of these companies; (3) to report to the attorney-general any violation of insurance laws; (4) to examine insurance companies, and admit them to do business in the State; (5) to make annual report to the governor of all the business of his office.

253. The Veterinary Surgeon.—This officer is appointed by the governor for a term of two years. He is charged with the duty of investigating contagious or infectious diseases among domestic animals, and he is given large powers to prevent the spread of such diseases, even to the destruction of the animals.

254. The State Board of Equalization.—This board consists of the governor, the auditor, secretary of State, treasurer, and commissioner of school and public lands. It is the duty of this board to compare the assessment returns of the several counties of the State, and equalize them so that all property shall be assessed at a proportionate value in the various counties. The secretary of State is required to keep a full record

of the proceedings of the board, and such record is published in the annual report of the auditor. This board is also authorized to decide upon the rate for the State tax necessary to meet the annual expenses, and make a levy of such tax in accordance with the rate decided upon.

255. The State Board of Canvassers.—This board consists of the governor, the chief justice of the supreme court, the secretary of State, and the auditor. The lieutenant-governor and attorney-general are required to be present during the work of canvassing any vote. The board canvasses the election returns for all State officers on the Thursday following the fourth Monday after the day of election (provided the returns are all received), and makes an abstract of the votes cast for each officer. A certificate of election is issued by the governor or secretary of State, under seal of the State, to those declared elected by the board. A majority of the board decides all matters of dispute. The vote for members of Congress and electors of president and vice-president is canvassed by the governor and secretary of State in the presence of the auditor, the attorney-general, and one or more judges of the supreme court. The governor, in the case of these officers, issues the certificates of election under seal of the State, countersigned by the secretary of State.

256. The State Board of Regents.—This board is composed of five members appointed by the governor, and confirmed by the senate. It has full control of all State institutions of higher education, viz., the State University at Vermillion, the Agricultural

College at Brookings, the four Normal Schools as heretofore enumerated, and the School of Mines at Rapid City. No resident of a county in which one of these institutions is situated is eligible as a member of the board of regents. It is required by law that the members of the board shall be from the different political parties of the State. The board holds two regular meetings each year, and reports biennially to the governor. The members receive no salary, but draw \$5.00 per day to cover expenses for the time spent in actual service, not to exceed \$1000 for any one year. Their term of office is six years.

257. The State Board of Charities and Corrections.—This board is composed of five members, appointed by the Governor and confirmed by the Senate. They have charge of the charitable and penal institutions of the State, viz., the Penitentiary at Sioux Falls; the Reform School at Plankinton; the Asylums for the Insane at Yankton and Redfield; the School for Deaf Mutes at Sioux Falls; and the School for the Blind at Gary. Their term of office is five years, and they receive \$3 per day and expenses.

258. The Board of Railroad Commissioners.—The members of this board are elected for terms of six years. The board is composed of three members elected by districts. The railroad commissioner districts are as follows: First district, all that part of the State east of the Missouri River and south of the second standard parallel; second district, all that part east of the Missouri and north of the second standard parallel; third district, all that portion west of the Missouri. The law gives the board general supervision

of the railroads of the State, and all freight and passenger traffic thereon, with power to inquire into the violation of any State laws by the railroads.

259. The Board of Pardons.—This board consists of the secretary of State, attorney-general, and the presiding judge of the circuit in which occurred the conviction of the prisoner whose case is under consideration. It is required to meet in open session at the office of the attorney-general, whenever called together by the secretary of State. The pardoning power vested in this board is in limitation of that possessed by the governor. In all cases where the sentence of the court is capital punishment, imprisonment for life, or for a longer term than two years, or a fine exceeding \$200, no pardon can be granted or fine remitted, except upon the recommendation of the board of pardons, after a full hearing of the case in open session. In other cases, except treason or impeachment, the governor has power to grant reprieves, commutations, and pardons after conviction. In case of treason the governor has power simply to suspend the sentence and report the case to the legislature for its action and final decision.

260. The State Board of Health.—This board consists of five members appointed by the governor and confirmed by the senate. The term of office is five years. The member whose term of office first expires is constituted president and superintendent of the board, and the member whose term is second to expire is constituted the secretary. The regular meetings of the board occur twice a year, in May and November. The superintendent of the board receives

\$5 per day for the time of actual service, and five cents per mile for traveling expenses. Other members receive no pay except five cents per mile for traveling expenses.

The powers of the board are as follows :

1. To make and enforce rules to prevent the spread of any contagious, infectious, and malarial diseases, to establish a quarantine, and isolate persons affected with contagious or infectious diseases.

2. To isolate, kill, or remove any animal affected with contagious or infectious disease, and establish sanitary conditions in general

3. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale.

4. To superintend the several boards of health in counties, cities, villages, and towns.

261. State Historical Society.—The Legislature of 1901 established a department of history to be administered by the State Historical Society. The powers and duties vested in this department are, to collect and publish historical data particularly concerning the State and the surrounding region, to maintain a gallery of historical portraiture and an ethnological and historical museum, and to encourage the study of history within the State. There are eleven trustees of the society, who, together with the Governor, Secretary of State, and State Auditor constitute the executive committee in whom is vested the full administrative power of the society. The secretary is the executive officer of the society, and may receive a salary for the labor connected with his office.

261a. State Food and Dairy Commission.—The Legislature of 1901 created the office of food and dairy commissioner, and prescribed extensive and important duties to this officer. This officer is charged with the enforcement of existing laws against adulteration of food products, and to this end he is required to have the chemists of the State educational institutions examine, from time to time, various samples of food products offered for sale within the State. He is especially charged with the duty of encouraging the industry of butter and cheese manufacture. The commissioner is authorized to issue licenses to creamery and cheese factory proprietors, also to butter and cheese makers. It is made unlawful under a heavy penalty to sell or offer for sale oleomargarine or any substitute for butter unless it be properly labeled so as to indicate its exact character. Cheese must be graded and labeled so as to show its quality. The commissioner is given judicial power to conduct an examination in order to discover any violations of the law against adulteration of food products. He has large discretionary powers, and may confiscate any food products offered for sale in violation of the law. He has the right to enter any place where food products are offered for sale, and take samples for examination. The commissioner receives a salary of \$1,200 per year, and can appoint a stenographer to aid him in his work. Legislation of this character is becoming more and more common, and illustrates the extent to which the government goes in protecting the individual in his rights. It is difficult to see how the ordinary citizen could protect himself against the frauds of adul-

teration in food products which are so common and yet so difficult to detect.

261b. State Board of Agriculture.—This board consists of five persons appointed for terms of two years by the governor. The board is charged with the duty of promoting agriculture, horticulture, manufactures, and domestic arts. The principal means employed to accomplish this is by holding annually a State fair at one of the important cities of the State. The members of the board receive no compensation beyond the payment of expenses incurred in the performance of their official duties.

261c. The Soldiers' Home.—This institution, located at Hot Springs, was created by the last Territorial Legislature, and is for the benefit of all honorably discharged soldiers, sailors or marines residing within the State. The management of the institution is vested in a board of five commissioners, appointed by the governor. Their term of office is six years. The board meets annually in June. The immediate administration of the affairs of the institution is committed to a commandant of the home, appointed by the board. The commissioners receive no pay for their services save actual expenses incurred in performing their duty.

261d. Board of Pharmacy.—The members of this board, nine in number, are appointed by the governor upon the nomination of the pharmaceutical association. The State is divided into three pharmaceutical districts, and the association nominates three persons from each district in which a vacancy occurs, and from these the governor makes his appointments.

The term of office is three years. It is the duty of the board to examine all applicants desiring to be registered for the practice of pharmacy, and grant all certificates to registered pharmacists. The law requires every person engaged in pharmacy to hold a certificate from the board. This certificate is renewed from year to year upon the payment of a small fee. The secretary of the board may receive a salary. The members of the board receive \$5 per day and their expenses for time actually spent in the performance of their duties. The board is also charged with the duty of registering all assistant pharmacists engaged in the practice of pharmacy in the State. The fee of \$5 is charged by the board for the examination and registration of applicants for pharmacists' or assistant pharmacists' certificates. The purpose of the law is to protect the public against carelessness or ignorance in the sale and handling of drugs, and to prevent dishonest practices, as in the adulteration of drugs. The board may, at any time, revoke any pharmacist's certificate when they are convinced of his incompetence, or neglect to comply with the provisions of the law.

261e. Board of Embalmers.—This board consists of five members, the president and secretary of the State board of health, and three other persons appointed for terms of five years by the governor. It is the duty of the board to examine candidates for license to practice embalming and the general business of undertaking. Any person practicing this profession within the State is required to hold a license from this board. The board has the power to prescribe the conditions of sanitation in order to prevent the spread

of contagious and infectious diseases in the preservation and handling of dead bodies. It is the intention that this board shall supplement the board of health in the performance of its duties, and to an extent, this board acts under the authority of the board of health. The secretary of the board may receive a salary; the other members receive the necessary expenses incidental to the proper performance of their duties.

261f. Fish and Game Wardens.—Stringent laws have been enacted to protect the fish and wild game of the State.* In order to secure the enforcement of these laws the governor is empowered to appoint one person in each county who shall act as fish and game warden to secure the observance of the laws relating to these subjects. The warden of each county may appoint ten deputies to assist him in the performance of his duties. The purpose of these laws is, first, to prevent the extermination of the fish and game, and, second, to protect the land owners in their rights over game. Non-residents desiring to hunt game are required to take out a hunter's license, the fee for which is ten dollars. The prairie chicken is widely known and much prized as an article of food, and the law very carefully restricts the shipment of these birds out of the State as an article of commerce. The law carefully prescribes the "open season" for hunting the various kinds of game within the State.

*See Session Laws of 1895, Chapter 90. Also Laws of 1899, Chapter 88, and Chapters 90 and 91.

CHAPTER XVII

ORGANIZATION OF THE JUDICIARY DEPARTMENT

262. A Court Defined.—A court is established for hearing and determining legal controversies and the administration of justice therein. It is an organized body composed of one or more judges with well-defined powers. The presiding judges are officially known as the court. But the term court may also refer to judge and jury sitting as a tribunal. There are various officers who aid in the transaction of the business of the court. These are the attorneys, who prepare cases for trial and formally present the two sides of each issue, acting for the parties in the cases, their clients; the clerk of the court, who records all the judicial acts and decisions of the court and certifies to them when necessary, files all court documents, administers oaths, and performs other ministerial acts; the marshal, sheriff, or constables, who are ministerial officers of the court and general peace officers, and who serve various legal papers; and bailiffs, who are the assistants of the marshal or sheriff.

263. Jurisdiction of Courts.—By jurisdiction is meant the legal authority of a court to hear and determine cases at law and in equity. Original jurisdiction is the right to hear and determine a legal action when the case is brought into court for the first time. Appellate jurisdiction is the judicial hearing of a case that has already been decided by some inferior

court, and is brought into court again on appeal. When a case can be heard in but one court, this is termed exclusive jurisdiction; when it can be tried in two or more courts, their jurisdiction is said to be concurrent.

264. The State Judiciary.—In one sense, the judiciary of the State includes all the courts of local jurisdiction within its limits. As here used it includes only the supreme court and the circuit courts. State courts deal with questions of law and equity arising under the law and constitution of the State. Questions arising within the State under the Federal law or constitution are taken to a United States district or circuit court. The decision of the supreme court of the State is final in all cases where no rights are in question the guarantee of which is to be found either in the Federal constitution or laws. Appeals from the supreme court of the State to the National courts can be taken in all cases where the interpretation of the constitution or laws of the United States is involved. The decision of the supreme court of the State declaring a law unconstitutional would be final. A decision of this court affirming the constitutionality of a State law would be final unless a question of rights, private or public, under the Federal constitution should arise, in which case the matter could be carried to the supreme court of the United States. Some actions may be begun either in a State court or a Federal court.

265. The Jury System.—One of the distinctive features of Anglo-Saxon government is the institution of the jury and the system of jury trial. This is

commonly viewed as the safeguard of our liberties and the guarantee of our rights, and the State and National constitutions both provide for its continuance. In its early history, the jury was composed of all the suitors attending the court, but gradually a committee of these was selected, usually consisting of twelve, who decided the cases submitted to them. Thus the jury represents society sitting to determine right and justice between court claimants. In early English history, the jury decided cases upon their own knowledge, and thus were both witnesses and jury. To-day the province of the jury is to determine the facts in the question at issue from the evidence presented upon either side. The judge sits to declare the law in the case and the extent of its application, while the jury must find its verdict in accordance with the facts viewed in the light of the law expounded and applied by the judge. Another feature of the jury system is the use of the jury to determine the probable authors of crimes, and return them to the court for trial.

266. Drawing Juries.—The law provides a definite method for the selection of jurors from the number of citizens eligible for this duty. In counties in which there is no township organization, a jury list of two hundred names, required by law to be kept in the office of clerk of courts, is made out by the county commissioners, the names being taken from the various commissioner districts in proportion to population. In counties with township organization the procedure is different. The commissioners allot to the townships, towns, and cities such number of names as is proportionate to their population. The local officers of

these organizations, supervisors of townships, town trustees, or city aldermen, make a selection of the required number of names and report them to the clerk of courts. If a county has part of its territory not organized into townships, the commissioners select names for the jury list for such territory in proportion to population as nearly as they can determine. When the judge orders jurymen to be drawn for any session of court, the sheriff, clerk of courts, treasurer, and auditor draw by lot from the names constituting the jury list, first, a sufficient number of names to comprise the grand jury (if one is ordered drawn); and, second, the members of the petit jury to such a number as the judge may order. These are summoned to appear at court by the sheriff, who makes a personal service of a *venire*, or order to come, issued by the clerk of courts. Any irregularity in the drawing of the grand jury is ground for annulling its findings of bills of indictment or presentments.

267. The Supreme Court of the State. — The jurisdiction of the supreme court is mainly appellate. It has a general superintending control over all inferior courts under such regulations and provisions as may be prescribed by law. It has authority to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and others, original and remedial. No jury trials are allowed in the supreme court, but questions of fact can be sent down to the circuit courts for trial by a jury. The supreme court has been constituted a court of claims, and has been given original jurisdiction in all cases of action in claims against the State. The supreme court is required to furnish the

governor with its opinion upon important matters of law involved in the exercise of his executive powers, and upon solemn occasions.

268. Supreme Judges.—The judges of the supreme court are three in number, and may be increased to five by the legislature. They are elected by popular vote, but must be selected one from each of the three districts into which the State is divided. They hold office for six years. They must be qualified electors, thirty years of age, citizens of the United States, residents of the State for the two years next preceding their election, and learned in the law. A majority of the judges is required in order to render a decision. The members of the court elect a presiding judge from among their number for such a time as they may determine.

269. Officers of the Supreme Court.—The officers of the supreme court are a clerk, a reporter, and a marshal. All these officers are appointed by the judges of the court, and hold office during their pleasure.

270. Supreme Court Districts.—The districts from which the judges of the supreme court are elected are as follows: First district, all that part of the State lying west of the Missouri River; second district, all that portion east of the River and south of the second standard parallel; third district, all that portion east of the River and north of the second standard parallel.

271. The Circuit Court.—The State is divided into eight circuits, and in each of these a circuit court is established. The jurisdiction of this court is original

in all cases at law and in equity. It has appellate jurisdiction in all cases arising in justices courts, and in all probate matters from the county court. It has the same power to issue writs as is possessed by the supreme court. Writs of error and appeal are allowed in this court from the county court only in probate matters. Limitation of the jurisdiction of the circuit court as to value, amount, and grade of offense rests with the legislature.

272. The Judges of the Circuit Court.—The judges of the circuit courts are eight in number, elected one from each of the eight judicial districts into which the State is divided. The qualifications for circuit judge are the same as those for judges of the supreme court, except that the age limit is twenty-five instead of thirty years. They hold office for a term of four years.

273. Officers of the Circuit Court.—The officers of the circuit court are a clerk, sheriff, reporter, and bailiffs.

274. Circuit Court Districts.—The circuits or districts of the circuit court are as follows :

First Circuit.—The counties of Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Gregory, Tripp, and Mayer.

Second Circuit.—The counties of Lincoln, Minnehaha, McCook, Moody, Lake, and Union.

Third Circuit.—The counties of Brookings, Kingsbury, Deuel, Hamlin, Codington, Clark, Day, and the Wahpeton and Sisseton Indian reservations, except such portions of said reservations as lie in Marshall county.

Fourth Circuit.—The counties of Sanborn, Davison, Aurora, Brule, Buffalo, Jerauld, Hanson, Miner, Lyman, Presho, and Pratt.

Fifth Circuit.—The counties of Beadle, Spink, Brown, Marshall, Grant, and Roberts.

Sixth Circuit.—The counties of Hand, Hyde, Hughes, Sully, Stanley, Potter, Faulk, Edmunds, Walworth, Campbell, McPherson, and all that portion of the State lying east of the Missouri River and not included in any other judicial circuit.

Seventh Circuit.—The counties of Pennington, Custer, Fall River, Shannon, Washington, Ziebach, Sterling, Nowlin, Jackson, Washabaugh, and Lugenbeel.

Eighth Circuit.—The counties of Lawrence, Meade, Scoby, Butte, Delano, Pyatt, Dewey, Boreman, Schnasse, Rhinehart, Martin, Choteau, Ewing, Hardin, and all that portion of the State west of the Missouri River and north of the Big Cheyenne River, and the North Fork of the Cheyenne River not included in any other judicial circuit.

275. Compensation of State Officers.—The salaries of the State officers are as follows: The governor, \$3,000; the lieutenant-governor, \$600; the secretary of State, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, each, \$1,800. The railroad commissioners and public examiner each receive \$1,500. The commissioner of insurance receives \$1,200. The commissioner of labor statistics, mine inspector, and attorney-general receive, each, \$1,000. The inspector of illuminating oils has a fee of ten cents per barrel

for each barrel of oil inspected. The commissioner of irrigation is paid no salary by the State. Members of the legislature are paid \$5 per day during the session of the legislature, and five cents per mile for traveling expenses. Judges of the supreme court receive, each, \$3,000 per year; and circuit judges, \$3,000 per year. In any circuit containing less than five thousand square miles and a population of less than fifty-four thousand, the salary of the circuit judge is \$2,000. Members of the various State boards receive, generally, a small per diem for time actually spent, and the State bears expenses incurred in the performance of their duties.

CHAPTER XVIII

JUDICIAL PROCEDURE

276. Cases or Actions.—There are two general classes of cases or actions brought for hearing before courts, viz., civil and criminal. Civil cases arise from the attempt of the individual either to secure the possession of certain rights of property or person, or to protect rights of property or person already secured. Criminal cases arise from the violation of a public right recognized by law for which penalties are provided. In criminal cases the interests of society are involved, and hence the prosecution is made by a public officer in the name of the State. The end sought in all this is the determination of justice between individuals, or between individuals and the government which represents society. The purpose of the courts is to secure justice by applying the law to the solution of the questions at issue between the parties to an action. But no court can take any action to further the ends of justice until a specific case of alleged injustice has been judicially brought before it.

277. Cases in Equity.—In civil proceedings, a distinction is made between cases at law and cases in equity. Under English law, cases in equity arose when a redress of grievances could not be obtained in the regular law courts, either because these courts did not recognize the right in question or were unable to

enforce it. Petitioners in such cases were referred to an officer of the King's Court known as the Chancellor. This gave rise to another court, with a special form of procedure for this class of cases, differing from that of the regular court. It was known as the court of chancery, while the regular court was called a court of common law in distinction therefrom. There gradually grew up a large number of recognized rights and remedies to be secured only in chancery (equity) courts. These rights and remedies are those wherein the common law rules, by reason of their universality, are deficient. They were brought to this country with the rest of the English law, and, with various modifications and in varying ways, are recognized by the different States of the Union. In some States a regular court of chancery exists; in others these cases are conducted by the regular courts acting under the forms of a chancery court; in the others all formal distinctions between suits at law and cases in equity have been abolished. South Dakota is one of these. Here there is but one form of action; the same court grants both legal and equitable relief and recognizes both legal and equitable rights, and the pleadings or allegations are alike; but the distinction between legal rights and remedies and equity rights and remedies is a natural one of historic development and organic growth. Legal or common law rules and equity rules are alike part of the system of justice which we term the law, equity having been engrafted upon the common law after it had attained a settled form, but these rules are as potent as when enforced by separate tribunals. To define equity and distin-

guish it from the common law would be to go over the entire subject of civil rights.

278. Common and Statute Law.—A court is governed by rules and maxims termed the law. The law is of two divisions, written and unwritten. The unwritten law is embodied in what is ordinarily termed the common law. The common law of South Dakota consists of the general customs and maxims recognized by courts, and has its evidence in the decisions of judges. It is a development of the common law of England, which consists of the old legal maxims and customs of that country, and is termed the unwritten law to distinguish it from the written or statute law enacted by parliament. It had its origin in the decisions of the judges and the usages of political bodies. It was introduced into the colonies, and with modifications came into force in all the States, and remains in force unless set aside by legal enactment. The written law consists of the constitution and statute law in force at any time.

279. The Petit Jury.—This jury consists of twelve men drawn by lot from the jury list. Its function is to determine questions of fact upon evidence presented in the trial of a case either civil or criminal. A unanimous decision is required in order to secure a verdict, except in certain cases before a justice of the peace.

280. The Functions of the Grand Jury.—The grand jury has been abolished in South Dakota, save in the investigations of special and important cases upon petition of the State's attorney to the judge of the court, in which case a grand jury may be ordered

drawn in the usual way at the discretion of the judge. The grand jury is composed of not less than six nor more than eight men drawn by lot from the jury list. Its sessions are secret, and its duty is to determine the probable commission of a crime. The State's attorney advises and assists the jury in its work. The members of the jury are sworn not to disclose what passes in the jury room during their investigations. A bill of indictment is an accusation in writing charging a person with a public offense. It is drawn by the State's attorney and laid by him before the grand jury with the evidence. If the jury believes there is evidence to warrant a prosecution, the words "found," or "a true bill," are endorsed on the indictment, and it is returned to the court, where the person charged with the crime is arraigned to plead in answer either guilty or not guilty. The jury may not consider the evidence sufficient to warrant prosecution, in which case they will endorse on the bill "not found," or "not a true bill." If a bill is not found against a person he goes free, but may be subsequently indicted by another grand jury. A presentment is an accusation charging the commission of a crime either upon the knowledge of the grand jury, or upon evidence before it, but is made without any bill of indictment being before the jury, and is not made at the instance of the State. A person thus presented and charged with crime must be regularly indicted before he can be called upon to plead or be put to trial. The grand jury is also authorized to inquire into the condition of the public prisons of the county and report their condition to the court. The misconduct of all public

officials of the county is also a matter for this jury to investigate.

281. Prosecution upon Information.—In those criminal cases which are not investigated by a grand jury, the prosecution is based upon a formal document known as an information, which is drawn and presented to the court by the State's attorney, and which, like an indictment, charges the commission of a crime upon a certain person. An information is based upon evidence presented to the prosecuting officer, such that he has reason to believe that a crime has been committed.

282. Crimes.—A crime is an offense in the violation of some law for which a penalty has been provided, upon conviction. By statute, crimes are divided into felonies and misdemeanors. A felony is a crime which is punishable by death or imprisonment in the penitentiary; a misdemeanor is any crime of lesser degree than a felony.

283. Court Procedure in Civil Cases.—Court procedure is very formal and technical, but the ordinary routine of business should be familiar to every citizen. The following summary outlines the formal steps by which a civil case is brought into court, tried, and the judgment of the court executed:

1. The person seeking redress before the court is known as the plaintiff, and the one from whom satisfaction is demanded is known as the defendant. The former causes a complaint to be made out, setting forth the grounds of the action and demanding redress and satisfaction. Along with this, but forming no part of the complaint, goes a summons issued by the

court to the defendant to appear and answer the complaint. This answer may be made by an attorney. It may set forth one or more of several pleas. The defendant may deny the assertions of the plaintiff and challenge him to trial; he may admit the allegations of the plaintiff and set forth other facts that offset them, or "void their effect"; or he may set up a counter claim. At any stage of the proceedings the defendant may enter a demurrer to the pleading of the plaintiff on the ground that the court has no jurisdiction in the case, or that the facts stated in the complaint do not constitute a cause of action, and, with less latitude, for other reasons. A reply is sometimes required to be made to the answer by the plaintiff, and the plaintiff may also demur to the answer made, for several reasons. The complaint, answer, and reply, together with any demurrers, answers and replies thereto, are called the pleadings. If the pleadings differ in regard to the facts, the case must be laid before a jury to determine them. All papers in the case are filed with the clerk of the court, and by him the case is placed on the docket, or list of cases for trial.

2. When the time comes for the trial the first step is the selection of a jury. If either party can show good reason why any member of the jury that has been regularly summoned is not likely to give a fair decision, he is rejected and his place filled from the panel. If the panel should be exhausted, the sheriff summons such citizens as he pleases, known as talesmen, till the jury is filled. Each party may reject three jurors without giving any reason for the action. This is known as the right of "peremptory challenge."

3. With the jury selected, the trial of the case is opened by the plaintiff, usually his attorney, reading the complaint and making an opening statement of the facts he intends to prove. He then calls his witnesses and examines them under oath. Each witness may be cross-examined by the defendant or his counsel. A re-direct examination confined to points already touched upon may be had, to be followed by a re-cross-examination. When all the witnesses for the plaintiff have been examined, he is said to rest his case. The counsel for the defense then reads the defendant's answer, and makes an opening statement of his side of the case and what he intends to prove. The examination of the witnesses for the defense now follows, after which the plaintiff may introduce testimony in rebuttal, or to disprove the statements of the defendant.

4. When the defendant finally rests his case, and the rebuttal of the plaintiff is concluded, the counsel in turn address the jury. These addresses are known as the arguments in the case, and are made in this order: first, the counsel for the plaintiff, then the reply by the counsel for the defense, and, finally, the closing by the counsel for the plaintiff. The attempt in these arguments is to show that the evidence supports the allegations made in the pleadings.

5. Before the jury retires to deliberate the judge delivers his charge to them. In this charge he states to the jury the law relating to the case, indicates the points to be decided, and instructs the jury to find the verdict in harmony with the facts, in the light of the law applying to the case. This charge must be

in writing and is preserved as a part of the court records.

6. If the jury arrive at an agreement, they make out a written statement, which is presented in open court, and is known as a verdict. The members of the jury may be questioned individually by the judges as to their consent to the verdict. If the jury cannot agree, they may, after the lapse of a reasonable time in the discretion of the court, be discharged from further consideration of the case. The verdict must be in accordance with the law and the evidence, or it may be set aside by the judge and the case continued for a new trial.

7. In the case of a lawful "money verdict" for the plaintiff being found, the judge directs a judgment to be entered in accordance with it, and the execution of this is placed in the hands of the sheriff. If the judgment is not satisfied by the party against whom it is issued, the sheriff may seize and sell at public auction property sufficient to meet the judgment. The verdict may require the specific performance of the terms of some contract, in which case the failure to comply would place the person in contempt of court, and liable to punishment by imprisonment or fine, one or both.

8. If the counsel for the defeated party can show that the case has been improperly managed, if proper evidence has been ruled out, or improper evidence admitted, if the judge has incorrectly interpreted the law, if any error has been made likely to have influenced the jury in making up their verdict, he may appeal to a higher court. If this court, after hearing

the arguments on these points, decides that an error has been made, the verdict is set aside, and the case returned for a new trial.

284. Procedure in Criminal Cases.—In criminal cases the proceedings follow the same general course as in civil cases. The bill of indictment or the information constitutes the complaint, and the defendant in open court has simply to plead in answer either guilty or not guilty. If he pleads guilty, no trial is necessary, and he is immediately sentenced by the court. If the plea is not guilty, the trial proceeds. In selecting the jury the defendant is allowed only three peremptory challenges of jurors if the case does not involve imprisonment in the penitentiary. If it does involve such imprisonment, he may challenge ten jurors peremptorily, and if it involves the death penalty he may challenge twenty. The prosecution may challenge peremptorily six jurors in capital cases, and three in other cases. If the defendant can show that there has been any irregularity in the drawing of the grand jury, or that the indictment or information is not properly drawn according to very precise technical rules, the case may be thrown out of court, and further proceedings under the indictment or information stopped. The indictment or information is then said to be “quashed.” If the jury in a criminal case brings in a verdict of guilty, the judge passes sentence upon the defendant in accordance with the law, and the sheriff is entrusted with its execution. If, after a fair trial, the defendant is acquitted, he cannot again be tried for that offense.

285. Court Writs.—A writ is a command issued

by a court authorizing or restraining some action. A writ may issue during the progress of a case, but the proceeding to obtain any writ is always, in effect, a separate suit.

286. Habeas Corpus.—This is one of the most ancient and valuable of the legal writs. Its origin is older than Magna Charta. For centuries the kings of England strove to nullify and ignore it, but it became firmly established as a great safeguard of personal liberty. The writ operates to secure an immediate examination of the case of any person who may be deprived of his liberty, and is an order from the court to the person holding him in custody to present him before the court. The writ is issued in the interest of the prisoner, and if sufficient (legal) reason for his retention does not appear, the court orders his immediate discharge. If the officer holding the prisoner can show good and sufficient reason why he should be held, he is remanded back to prison. The writ takes its name from the first two words of the old Latin form, meaning *you may have the body*.

287. Mandamus.—This writ is issued for the purpose of compelling officers, inferior tribunals, corporations, boards, or persons to do some specific act imposed upon them by law which they otherwise refuse to perform.

288. Quo Warranto.—The writ of quo warranto is an order of the court for a person or a body of persons to appear and show by what warrant they exercise a public office, privilege, franchise, or liberty.

289. Certiorari.—This is a writ used by a superior court to call up the records of an inferior court,

or to remove a cause there pending, either that errors and irregularities may be corrected or that more speedy and sure justice may be secured. The statute provides that it may be granted "by the supreme and circuit courts when inferior courts, officers, boards, or tribunals have exceeded their jurisdiction and there is no remedy by writ of error or appeal, nor in the judgment of the court any other plain, speedy, or adequate remedy." It is obtained upon complaint of a party who alleges that he has not received justice, or that he cannot have an impartial trial in an inferior court.

290. Injunction.—A writ of injunction is an order or judgment of a court commanding the defendant to do or refrain from doing a particular thing.

291. Prohibition.—A writ of prohibition is an order by a superior court commanding an inferior court, tribunal, corporation, board, or person, to cease from exercising authority in cases over which they have no valid jurisdiction ; or it restrains such inferior court, tribunal, corporation, board, or person from going beyond legitimate authority, and transgressing the bounds prescribed by law. The writ of prohibition is the exact counterpart of the writ of mandamus. The distinction to be made between a writ of prohibition and an injunction is that the former is issued only to tribunals or persons acting in a judicial or quasi-judicial capacity ; while the latter, the writ of injunction, is issued to boards, corporations, or persons acting in a non-judicial capacity.

292. A Writ of Error. — A writ of error is a process (or order) issued by a superior court to an inferior one, requiring that its records be sent up for

examination in order to determine whether error has been committed in its proceedings. This writ is now generally superceded by appeal (Section 283, paragraph 8). The writ issues upon the complaint of one of the parties to the trial in the inferior court, and the ground is error in the management or rulings in the case.

293. A Subpœna.—A subpœna is a process or order of a court whereby witnesses are brought into court in order to obtain their testimony. Failure to obey the summons of a subpœna is punishable as contempt of court by fine or imprisonment, one or both.

294. A Warrant.—Historically a warrant is an authorization, from a court or other competent authority, for a specific act to be done. A warrant upon a public treasury for money, and a warrant issued by a court, have the same historical origin. A warrant, in the modern legal use of the term, is a formal order of court authorizing the officer to whom it is issued to seize or detain property or persons, or to carry the judgment of the court into execution by a seizure and sale of property. Warrants for this latter purpose are sometimes known as writs or executions.

CHAPTER XIX

THE STATE MILITIA

295. State Militia Defined.—The militia of the State consists of all able-bodied male persons residing within the State, between the ages of eighteen and forty-five years, except such persons as are exempted either by State or National law. Members of the army or navy, persons having mental or physical disability, or persons having conscientious scruples against bearing arms are exempted by law from service in the militia. The enrollment of the militia is made by the assessor at the time of listing the property for taxation. One copy of the list thus obtained is filed with the county auditor, and another sent to the adjutant-general. Only a limited number of the militia thus enrolled are in the actual military organization, although all members would be liable to service in time of war or insurrection.

296. The South Dakota State Guard.—That part of the militia that is under actual military organization, in uniform, and doing regular drill work, is known as the South Dakota State Guard. This is to consist of not less than one troop nor more than one squadron of cavalry, not less than one section nor more than one battery of artillery, and one regiment of infantry of not less than two nor more than four battalions. The governor may, in his discretion, organize two regiments of infantry. He may also

organize the State Guard into a brigade and appoint a brigadier-general to command it. A battery of artillery consists of three sections of two guns each, one captain, one adjutant and one quartermaster with the rank of lieutenant, one quartermaster-sergeant, and one chief trumpeter. Each section of artillery consists of two guns, with one lieutenant, one first sergeant, four sergeants, four corporals, two musicians, two teamsters, and not less than twenty nor more than forty privates, unless otherwise ordered by the commander-in-chief. A squadron of cavalry consists of four troops with one major, one assistant surgeon with the rank of captain, one adjutant and one quartermaster each with the rank of lieutenant, one sergeant major, one hospital steward, one chief trumpeter. A troop of cavalry consists of one captain, one first lieutenant, one second lieutenant, with several subordinate officers, and not less than twenty nor more than forty privates, except as the commander-in-chief may direct. A regiment of infantry consists of one colonel, one lieutenant-colonel, with the usual subordinate officers, and of not less than two nor more than four battalions. A battalion is composed of four companies and is commanded by a major with subordinate officers. A company of infantry is composed of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, and not less than thirty-two nor more than sixty-four privates.*

297. Adjutant-General.—This officer is the most

* It should be observed that this organization of the State militia differs somewhat from that of the United States Army.

important one of the militia next to the commander-in-chief. He makes known the orders of the commander-in-chief, and is the medium for all communications from the national guard to that officer. He receives and lays before the commander-in-chief all recommendations of the heads of military departments, and carries out the instructions of his superior officer relative thereto. He makes annually a return of all the State guard, and has general supervision of all military matters in the State under the direction of the commander-in-chief. The adjutant-general ranks as brigadier-general. Assistant adjutant-generals may be appointed by the governor upon recommendation of the adjutant-general, and these bear the rank of colonel. The adjutant-general is charged with the duty of organizing and conducting a pension bureau to aid ex-soldiers or ex-sailors in securing pensions from the United States. This he does without fee or commission. He receives a salary of \$1,200 per year and his necessary expenses in performing the duties of his office.

298. Officers of the South Dakota State Guard.—The governor is commander-in-chief of the militia, and appoints all field officers (*i. e.* regimental officers or officers above the rank of captain). All commissions to officers of the national guard are issued by the commander-in-chief, countersigned by the adjutant-general. Company, troop, and battery officers are elected by the members of the company, troop or battery. The staff of the commander-in-chief consists of the adjutant-general and such subordinate officers as may be necessary. These officers are appointed by the commander-in-chief.

CHAPTER XX

POLITICAL PARTIES AND ELECTIONS

299. *Origin of Parties.*—Political parties arise out of differences of opinion in regard to questions of public welfare, and of the proper manner of conducting the government. In every state, pressing and important questions force themselves upon the attention of its citizens. How much money shall be expended for public purposes ; what methods of taxation shall be adopted ; what shall be the policy of the government in regard to the sale of intoxicating liquors ; to what extent shall the government undertake works of public improvement ; what amounts of gold and silver shall be coined ; what other circulating medium shall be issued ; what control shall the government exercise over the banking business ; how far shall the government interfere with the private life of its citizens,—these are all problems the solution of which is likely to influence profoundly the prosperity of the country. When men differ in regard to the proper policy of the state in these and other respects, those of like views will naturally seek to unite and thus control state action. To accomplish this, they must succeed in getting hold of a sufficient number of offices in the legislative and executive departments of the government. They can do this in a popular government only by obtaining the suffrages of at least a plurality of the voters. Hence party

organization is a necessity in a democracy to enable men to act together in political matters. When these parties seek to further the interests of the people and to maintain good government, they exercise a beneficent influence; but when the purpose of a party is merely to secure the offices and to share the "spoils," it becomes a danger to the body politic.

300. The Organization of Parties.—The organization of political parties is of the simplest kind. Committees are appointed who have charge of all party matters in their respective localities for a certain period of time. They call conventions and caucuses, provide speakers to address the people in regard to the doctrines and principles of the party, and attend to the raising of funds to defray the necessary expenses connected with the management. This is supposed to be done by voluntary contributions among those interested in party success.

301. Conventions.—Before any general election, the State committee of each party calls a convention to put in nomination candidates for the various State offices. This convention is made up of delegates from the several counties in the State. Each county committee calls a convention in the county to choose these delegates. This convention is composed of delegates chosen at caucuses held in the townships, cities, and towns in the county. The caucus, it will be seen, corresponds to the town-meeting; it is the town-meeting of the party. A formal statement of the views of the party is usually put forth at such conventions. These views are expressed in the form of resolutions, and are known as the "platform" of the

party. Sometimes the caucus is conducted under the form of an election. At this election, only the members of the party holding it take part. It is then known as a primary election. The judges of election are, of course, appointed by the committee of the party holding it. When county officers are to be elected, county conventions are also called for the purpose of making nominations for the county offices; while municipal and township officers are placed in nomination at the caucuses held in the municipality or township.

302. Certification.—The chairman and secretary of the State convention certify to the secretary of State the name and address of the various candidates nominated at the convention, together with the office for which each is nominated. In like manner the county auditor is notified of the results of the county conventions. In city and township elections, the certificate of nomination must be filed with the clerk of the city, town, or township. The secretary of State notifies the county auditor of the nominations for State offices filed in his office. Certificates of nomination must be filed with the secretary of State at least thirty days, with the county auditor twenty days, and with the clerk of a municipal corporation or township at least five days before election.

303. Independent Nominations.—A person may be nominated for any State office without the action of a convention or caucus, provided that, in the case of a State office, two hundred voters shall sign a request for such nomination, and file it with the secretary of State. He may be nominated for a county office by a similar request filed with the county auditor,

signed by twenty legal voters. In municipal and township elections, only five names are necessary to secure a nomination.

304. Publication of Nominations.—The county auditor must publish the names of all nominees who have been certified to him, at least twenty days before election, except in case of candidates for municipal officers. Two publications are deemed sufficient, and the last must be in the issue of the newspaper immediately before election. In case no newspaper is published in the county, three lists of the nominees shall be posted in each election precinct.

305. Ballots.—The county auditor must cause to be printed, at least ten days before election, official ballots, which shall contain the names of all persons nominated either by party conventions or petitions. The ballots must be delivered by the sheriff to the judges of election at each polling place within the county, not later than the Saturday night before election. The various party tickets are printed in parallel columns, and all questions to be submitted to the voters are also printed upon the ballot. For the convenience of the voters, sample ballots are printed upon paper of a different color, but with the same order and arrangement of names. The official ballot must be printed upon white paper of good quality and in black ink, in the English language only.

306. Time of Election.—The general election occurs on the first Tuesday after the first Monday in November. This date was apparently selected to correspond with the date fixed by the National Government for the election of presidential electors

and members of the National House of Representatives.

307. Precincts and Judges of Election.—For election purposes, the county is divided into smaller districts, known as election precincts. They usually correspond with the townships of counties, and the wards of cities. In each of these precincts three officers are appointed by the county commissioners, known as judges of election. Two of these are delegated as ballot clerks, whose duty it is to receive the ballots from the voters.

307a. Registration of Voters.—A registration of voters is required by law in order to prevent fraudulent voting. A list of the voters is made out by the municipal officers from a list made by the assessor and from previous registration lists. The list for each election is posted in each precinct before the day of election. A board of registration is formed from the municipal or township executive officers, and this board, on the last Tuesday before each election, revises the registration list in public. A person, otherwise a qualified elector, whose name is not on the list, in order to vote, must prove his residence in the precinct before the judges of election.*

308. Manner of Voting.—The judges of election are required to stamp each ballot with the words "official ballot." One of these is given to each voter, who must then proceed directly to one of the private compartments or "booths" provided at the polling place to enable each voter to mark his ballot

* Chapter 86, Session Laws of 1899.

in secret. The voter places a cross at the head of the ticket he votes. If he votes for one or more candidates of another party, he places a cross opposite every such name. If he does not vote a party ticket, he places a cross opposite each candidate's name for whom he votes. The voter delivers the ballot, folded with the official stamp in sight, to one of the judges, and in his presence it is placed in the ballot box. All of the official ballots must remain in the hands of the judges except when they are given to the voters as described above, and all spoiled ballots must be returned to them.

309. Assistance to Voters.—Any voter who, by reason of blindness or other physical disability, is unable to mark his ballot, may have the assistance of two of the judges of election in marking his ballot. These judges must belong to different political parties, if more than one party is represented on the board.

310. Canvass and Returns.—After the time for voting has expired, the judges must proceed to canvass the votes that have been cast. The votes for the several candidates must be canvassed in the order in which they occur upon the ballots. They compare the number of votes cast with the list of voters which they have kept during the day. They make out a list of all persons voted for with the number of votes cast for each, and return the same to the county auditor. The auditor and a majority of the county commissioners (or the county judge, county treasurer, and one of the county commissioners) constitute a canvassing board for the county. They ascertain from the re-

turns of the judges of election the number of votes cast for each candidate in the county, and make returns thereof. One copy of the returns is sent to the Governor, one to the Secretary of State, and one to the chief justice of the supreme court. The auditor issues a certificate of election to the persons found to be elected to each county office. The county canvassers return to the Secretary of State the number of votes cast for each State officer. In like manner the State board of canvassers examines the returns from each county, and ascertains who are elected to the various State offices. A certificate of election is then issued to each by the Secretary of State.

311. National Party Organization.—The political parties in the States are integral parts of the National party organizations. The lines of cleavage in National politics extend, also, to the State. Except at National elections, the State party organization acts in almost complete independence of the National party machinery. The National party organization is similar to that of the State in that it is managed by a central committee. National conventions of the Democratic and Republican parties consist of as many delegates from each State as twice its total congressional representation, four of whom are elected from the State at large, the remainder being apportioned to the various representative districts of the State. National conventions date from 1831, when the Anti-Masons nominated William Wirt for president, and the National Republicans, by this method, made Henry Clay their nominee for president.*

* American Government, Chapter XXX.

PART IV

The Government of the United States

CHAPTER XXI.

THE MAKING OF THE GOVERNMENT

The American Government. Sections 66-222 inclusive.

The United States, both as forty-five individual States and as a Nation, are an outgrowth of the Thirteen English Colonies planted on the eastern shore of North America in the years 1607-1732. The process by which this change was effected, will be briefly described in this chapter.

312. The Colonial Governments.—The Kings of England gave to the companies, proprietors, and associations that planted the Colonies certain political powers and rights. These powers and rights were formally granted in documents called charters and patents; they were duly protected by regular governments, and so became the possession of the people of the Colonies. While differing in details, these governments were alike in their larger features. There was in every Colony (1) an Assembly or popular house of legislation; (2) a Council, which served as an upper house of legislation in most of the Colonies and as an

advisory body to the governor in all of them; (3) a Governor, and (4) Courts of Law. The members of the assembly were chosen by the qualified voters. The members of the council and the governors were elected by the people in Connecticut and Rhode Island, and were appointed by the proprietors in Maryland and Pennsylvania, and by the king in the other colonies. The judges were generally appointed by the king or his representatives. Powers of local government were distributed to local officers in every Colony.

313. The Home Government.—The Kings who granted the charters and patents, for themselves and their descendants, guaranteed to their subjects who should settle in the Colonies and their children, all liberties, franchises, and immunities of free denizens and native subjects within the realm of England. Previous to the troubles that led to the Revolution, the Home government commonly left the Colonies practically alone as free states to govern themselves in their own way. Still they were colonies. The charters enjoined them not to infringe the laws of England, and Parliament passed an act expressly declaring that all laws, by-laws, usages, and customs which should be enforced in any of them contrary to any law made, or to be made, in England relative to said Colonies, should be utterly void and of none effect. Moreover, the power to decide what was so contrary the Home government retained in its own hands.

314. Dual Government.—Thus from the very beginning the Colonies were subject to two political authorities; one their own Colonial governments, the other the Crown and Parliament of England. In other words, government was double, partly local and partly general. This fact should be particularly noted, for it is the hinge upon

which our present dual or federal system of government turns. The American, therefore, as has been said, has always had two loyalties and two patriotisms.

315. Division of Authority.—In general, the line that separated the two jurisdictions was pretty plainly marked. It had been traced originally in the charters and patents, and afterwards usage, precedent, and legislation served to render it the more distinct. The Colonial governments looked after purely Colonial matters; the Home government looked after those matters that affected the British Empire. The Colonies emphasized one side of the double system, the King and Parliament the other side. There were frequent disagreements and disputes; still the Colonists and the Mother Country managed to get on together with a good degree of harmony until Parliament, by introducing a change of policy, brought on a conflict that ended in separation.

316. Causes of Separation.—The right to impose and collect duties on imports passing the American custom houses, the Home government had from the first asserted and the Colonies conceded. But local internal taxation had always been left to the Colonial legislatures. Beginning soon after 1760, or about the close of the war with France, which had left the Mother Country burdened with a great debt, Parliament began to enforce such taxes upon the people directly. These taxes the Colonies resisted on the ground that they were imposed by a body in which they were not represented or their voice heard. Taxation without representation they declared to be tyranny. At the same time, the acts relative to American navigation were made more rigorous, and vigorous measures were taken to enforce them. In the meantime the Colonies had greatly increased in

numbers and in wealth, and the idea began to take root that such a people, inhabiting such a country, could not permanently remain dependent upon England but must become an independent power. The Stamp tax was one of the objectionable taxes.

317. Independence.—The Home government dropped or changed some of its obnoxious measures, but still adhered to its chosen policy. New and more obnoxious measures were adopted, as the Massachusetts Bay Bill and the Boston Port Bill. The Congresses of 1765 and 1774 protested, but to no real purpose. Some of the Colonies, like Massachusetts, began to take measures looking to their defense against aggression; and the attempt of General Gage, commanding the British army in Boston, to counteract these measures led to the battle of Lexington, April 19, 1775, and immediately brought on the Revolutionary war. All attempts at composing the differences failing, and the theater of war continuing to widen, the American Congress, on July 4, 1776, cut the ties that bound the Thirteen Colonies to England. After eight years of war the British government acknowledged American Independence.

318. The Political Effects of Independence.—The Declaration of Independence involved two facts of the greatest importance. One was the declaration that the Colonies were free and independent States, absolved from all allegiance to the British crown. The other was the formation of the American Union. The original members of the Union as States and the Union itself were due to the same causes. The language of the Declaration is, "We, . . . the representatives of the United States of America, in general congress assembled, . . . do, in the name, and by the authority, of the good people of these Colonies, solemnly publish and declare" their independence.

The States took their separate position as a nation among the powers of the earth. Thus, before the Revolution there were Colonies united politically only by their common dependence upon England; since the Revolution there have been States united more or less closely in one federal state or union.

319. The Continental Congress.—The body that put forth the Declaration of Independence, known in history as the Continental Congress, had, in 1775, assumed control of the war in defense of American rights. It had adopted as a National army the forces that had gathered at Boston, had made Washington its commander-in-chief, and had done still other things that only governments claiming nationality can do. And so it continued to act. First the American people, and afterwards foreign governments, recognized the Congress as a National government. But it was a revolutionary government, resting upon popular consent or approval, and not upon a written constitution. A government of a more regular and permanent form was called for, and to meet this call Congress, in 1777, framed a written constitution to which was given the name, "Articles of Confederation and Perpetual Union." Still Congress had no authority to give this constitution effect, and could only send it to the States and ask them for their ratifications. Some delay ensued, and it was not until March 1, 1781, that the last ratification was secured and the Articles went into operation.

320. The Confederation.—The government that the Articles provided for was very imperfect in form. It consisted of but one branch, a legislature of a single house called Congress. Such executive powers as the Government possessed were vested in this body. The States appointed delegates in such manner as they saw fit, and had an equal voice in deciding all questions. Nine States were

necessary to carry the most important measures, and to amend the Articles required unanimity. In powers the Government was quite as defective as in form. It could not enforce its own will upon the people, but was wholly dependent upon the States. It could not impose taxes or draft men for the army, but only call upon the States for money and men ; and if the States refused to furnish them, which they often did, Congress had no remedy. Much of the disaster and distress attending the war grew out of the weakness of Congress, and when peace came, the States became still more careless, while Congress became weaker than ever. Meantime the state of the country was as unsatisfactory as that of the Government. The State governments were efficient, but they looked almost exclusively to their own interests. Commercial disorder and distress prevailed throughout the country. As early therefore as 1785 the conviction was forcing itself upon many men's minds that something must be done to strengthen the Government or the Union would fall to pieces.

321. Calling of the Federal Convention.—In 1785 Commissioners representing Virginia and Maryland met at Alexandria, in the former State, to frame a compact concerning the navigation of the waters that were common to the two States. They reported to their respective Legislatures that the two States alone could do nothing, but that general action was necessary. The next year commissioners representing five States met at Annapolis to consider the trade of the country, and these commissioners concluded that nothing could be done to regulate trade separate and apart from other general interests. So they recommended that a general convention should be held at Philadelphia to consider the situation of the United States, to devise further pro-

visions to render the Articles of Confederation adequate to the needs of the Union, and to recommend action that, when approved by Congress and ratified by the State Legislatures, would effectually provide for the same. This recommendation was directed to the Legislatures of the five States, but copies of it were sent to Congress also and to the Governors of the other eight States. So in February, 1787, Congress adopted a resolution inviting the States to send delegates to such a convention to be held in Philadelphia in May following. And the Legislatures of all the States but Rhode Island did so.

322. The Constitution Framed.—On May 25, 1787, the Convention organized, with the election of Washington as President. It continued in session until September 17, when it completed its work and sent our present National Constitution, exclusive of the fifteen Amendments, to Congress. In framing this document great difficulties were encountered. Some delegates favored a government of three branches; others a government of a single branch. Some delegates wanted a legislature of two houses; some of only one house. Some delegates wished the representation in the houses to be according to the population of the States; others were determined that it should be equal, as in the Old Congress. Differences as to the powers to be exercised by Congress were equally serious. There were also controverted questions as to revenue, the control of commerce, the slave trade, and many other matters. Furthermore, the opinions that the delegates held were controlled in great degree by State considerations. The large States wanted representation to be according to population; a majority of the small ones insisted that it should be equal. The commercial States of the North said Congress should control the

subject of commerce, which the agricultural States of the South did not favor. Georgia and the Carolinas favored the continuance of the slave trade, to which most of the other States were opposed. But progressively these differences were overcome by adjustment and compromise, and, at the end, all of the delegates who remained but three signed their names to the Constitution, while all the States that were then represented voted for its adoption. What had been done, however, was to frame a new constitution and not to patch up the old one. The body that framed it is called the Federal Convention.

323. The Constitution Ratified.—The Convention had no authority to make a new constitution, but only to recommend changes in the old one. So on the completion of its work, it sent the document that it had framed to Congress with some recommendations. One of these was that Congress should send the Constitution to the States, with a recommendation that the Legislatures should submit it to State conventions to be chosen by the people, for their ratification. Congress took such action, and the States, with the exception of Rhode Island, took the necessary steps to carry out the plan. Ultimately every State in the Union ratified the Constitution; but North Carolina and Rhode Island did not do so until the new Government had been some time in operation. Nor was this end secured in several of the other States, as Massachusetts, New York, and Virginia, without great opposition.

324. Friends and Enemies of the Constitution.—Those who favored the ratification of the Constitution have been divided into these classes: (1) Those who saw that it was the admirable system that time has proved it to be; (2) those who thought it imperfect but still be-

lieved it to be the best attainable government under the circumstances; (3) the mercantile and commercial classes generally, who believed that it would put the industries and trade of the country on a solid basis. Those who opposed it have been thus divided: (1) Those who resisted any enlargement of the National Government, for any reason; (2) those who feared that their importance as politicians would be diminished; (3) those who feared that public liberty and the rights of the States would be put in danger; (4) those who were opposed to vigorous government of any kind, State or National.¹

325. The New Government Inaugurated.—The new Constitution was to take effect as soon as nine States had ratified it, its operation to be limited to the number ratifying. When this condition had been complied with, the Continental Congress enacted the legislation necessary to set the wheels of the new Government in motion. It fixed a day for the appointment of Presidential Electors by the States, a day for the Electors to meet and cast their votes for President and Vice-President, and a day for the meeting of the new Congress. The day fixed upon for Congress to meet was March 4, 1789; but a 'quorum of the House of Representatives was not secured until April 1, and of the Senate not until April 6, owing to various causes. On the second of these dates the Houses met in joint convention to witness the counting of the Electoral votes. Washington was declared elected President, John Adams Vice-President. Messengers were at once sent to the President- and Vice-President-elect summoning them to New York, which was then the seat of government. Here Washington was inaugurated April 30. The Legislative and Executive branches of the Government were now in motion.

¹G. T. Curtis: *History of the Constitution*, Vol. II, pp. 495, 496.

CHAPTER XXII

AMENDMENTS MADE TO THE CONSTITUTION

The American Government. Sections 457-460; 467-474; 536-537; 604-607; 623-652.

It was anticipated that amendments to the Constitution would be found necessary, and a method was accordingly provided for making them. This method embraces the two steps that will now be described.

326. Proposing an Amendment.—This may be done in either of two ways. First, Congress may propose an amendment by a two-thirds vote of each House; secondly, Congress shall, on the application of the Legislatures of two-thirds of the States, call a convention of the States for that purpose. The first way is evidently the simpler and more direct of the two, and it is the one that has always been followed.

327. Ratifying an Amendment.—This also may be done in one of two ways. One is to submit the amendment to the Legislatures of the States, and it becomes a part of the Constitution when it is ratified by three-fourths of them. The other way is to submit the amendment to conventions of the States, and it becomes binding when three-fourths of such conventions have given it their approval. Congress determines which of the two ways shall be adopted. The first is the simpler and more direct, and it has been followed in every instance.

328. Amendments I-X.—One of the principal objections urged against the Constitution when its ratification was pending in 1787-88, was the fact that it lacked a bill of rights. Such a bill, it may be observed, is a

statement of political principles and maxims. The States had fallen into the habit of inserting such bills in their constitutions. At its first session, Congress undertook to remedy this defect. It proposed twelve amendments, ten of which were declared duly ratified, December 15, 1791. These amendments, numbered I to X, are often spoken of as a bill of rights.

329. Amendment XI.—Article III of the Constitution made any State of the Union suable by the citizens of the other States and by citizens or subjects of foreign states. (See section 2, clause 1.) This was obnoxious to some of the States, and when such citizens began to exercise their right of suing States a movement was set on foot to change the Constitution in this respect. An amendment having this effect was duly proposed, and was declared ratified January 8, 1798.

330. Amendment XII.—According to the original Constitution, the members of the Electoral colleges cast both their ballots for President and neither one for Vice-President. The rule was that the candidate having most votes should be President, and the one having the next larger number Vice-President, provided in both cases it was a majority of all the Electors. In 1800 it happened that Thomas Jefferson and Aaron Burr had each an equal number of votes and a majority of all. The Democratic-Republican party, to which they belonged, had intended Jefferson for the first place and Burr for the second. The election went to the House of Representatives, and was attended by great excitement. Steps were taken to prevent a repetition of such a dead-lock. This was accomplished by an amendment declared ratified September 25, 1804.

331. Amendment XIII.—Slavery was the immediate exciting cause of the Civil War, 1861-65. In the course

of the war President Lincoln, acting as commander-in-chief of the army and navy of the United States, declared all the slaves held in States and parts of States that were engaged in the war against the Union free. The other Slave States, Delaware, Maryland, Kentucky, Tennessee, and Missouri, and parts of Louisiana and Virginia, his power did not reach as they were not in rebellion. The conviction grew strong throughout the country that slavery should not survive the war. This conviction asserted itself in Amendment XIII, which took effect December 18, 1865.

332. Amendment XIV.—At the close of the Civil War Congress was called upon to deal with the important question of readjusting the States that had seceded from the Union. It was thought necessary to incorporate certain new provisions into the Constitution. So an elaborate amendment was prepared and duly ratified. It was declared in force July 28, 1868. The most far-reaching of the new provisions were those in relation to citizenship contained in the first section.

333. Amendment XV.—Down to 1870 the States had fixed the qualifications of their citizens for voting to suit themselves. At that time most of the States, and all of the Southern States, denied suffrage to the negroes. The emancipation of the slaves, together with Amendment XIV, made the negroes citizens of the United States and of the States where they resided. But the negroes had no political power, and so no direct means of defending their civil rights. To remedy this state of things a new amendment was proposed and ratified, bearing the date of March 30, 1870. It declared that the right of citizens to vote should not be abridged, either by the United States or by any State, on account of race, color, or previous condition of servitude.

CHAPTER XXIII

THE SOURCE AND NATURE OF THE GOVERNMENT

The American Government. Sections 223-262; 610-613; 615-620; 655-658; 763-772.

The source of the Government of the United States, and some of its leading features, are either stated or suggested in the first paragraph of the Constitution. This paragraph is commonly called the Preamble, but it is really an enacting clause, since it gives the instrument its whole force and validity.

334. The Preamble. — “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The following propositions are either asserted or implied in this language :—

1. The Government proceeds from the people of the United States. They ordain and establish it. It is therefore: a government of the people, by the people, and for the people.

2. The ends for which it is ordained and established are declared. It is to form a more perfect union, establish justice, etc.

3. It is a constitutional government. It rests upon a written fundamental law. On the one part it is opposed

to an absolute government, or one left to determine its own powers, like that of Russia; and on the other, it is opposed to a government having an unwritten constitution, consisting of maxims, precedents, and charters, like that of England.

4. The terms Union and United States suggest that it is a federal government. The peculiarity of a federal state is that local powers are entrusted to local authorities, while general powers are entrusted to general or national authorities. How this division of powers originated, and how it affected the country in 1785-1789, was pointed out in the last chapter. The government of a State has been described in Part III. of this work. Part IV. is devoted to the Government that is over all the States.

5. The same terms suggest that the Government is one of enumerated powers. It must be remembered that when the Constitution was framed thirteen State governments were already in existence, and that no one dreamed of destroying them or of consolidating them into one system. The purpose was rather to delegate to the new Government such powers as were thought necessary to secure the ends named in the Preamble, and to leave to the States the powers that were not delegated, unless the contrary was directly specified.

335. The Constitution in Outline.—The Constitution is divided into seven Articles, which are again divided into sections and clauses.

ARTICLE I. relates to the Legislative power.

ARTICLE II. relates to the Executive power.

ARTICLE III. relates to the Judicial power.

ARTICLE IV. relates to several subjects, as the rights and privileges of citizens of a State in other States, the surrender of fugitives from justice, the admission of

new States to the Union, the government of the National territory, and a guarantee of a republican form of government to every State.

ARTICLE V., a single clause, relates to the mode of amending the Constitution.

ARTICLE VI. relates to the National debt and other engagements contracted previous to 1789 and the supremacy of the National Constitution and laws.

ARTICLE VII., consisting of a single sentence, prescribes the manner in which the Constitution should be ratified, and the time when it should take effect.

The fifteen Amendments relate to a variety of subjects, as has been explained in Chapter XXVIII.

336. The Three Departments.—It has been seen that the Constitution distributes the powers of government among three departments, which it also ordains and establishes. This was done partly to secure greater ease and efficiency of working, and partly as a safeguard to the public liberties. Absolute governments are simple in construction, concentrating power in the hands of one person, or of a few persons; while free governments tend to division and separation of powers. In the words of Mr. Madison: “The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”¹

¹ *The Federalist*, No. 47.

CHAPTER XXIV

THE COMPOSITION OF CONGRESS AND THE ELECTION OF ITS MEMBERS

The American Government. Sections 263-301; 324-330.

337. Congress a Dual Body.—From an early time, the English Parliament has consisted of two chambers, the House of Commons and the House of Lords. Such a legislature is called bicameral, as opposed to one that is unicameral. The words mean consisting of two chambers and of one chamber. The great advantage of a bicameral legislature is that it secures fuller and more deliberate consideration of business. One house acts as a check or balance to the other; or, as Washington once put it, tea cools in being poured from the cup into the saucer. Countries that Englishmen have founded have commonly followed the example of the Mother Country in respect to the duality of their legislatures. Such was the case with the Thirteen Colonies, but such was not the case with the American Confederation from 1775 to 1789. In the Convention that framed the Constitution, the question arose whether the example of England and of the Colonies, or the example of the Confederation, should be followed. It was finally decided that all the legislative powers granted to the new Government should be vested in a Congress

which should consist of a Senate and a House of Representatives.

338. Composition of the Two Houses.—The House of Representatives is composed of members who are apportioned to the several States according to their respective numbers of population, and are elected for two years by the people of the States. The Senate is composed of two Senators from each State who are chosen by the Legislatures thereof, and each Senator has one vote.

The composition of Congress at first sharply divided the Federal Convention. Some members wanted only one house. Others wanted two houses. Some members were determined that the States should be represented in the new Congress equally, as had been the case in the old one. Others were determined that representation should be according to population. These controversies were finally adjusted by making two houses, in one of which representation should be equal and in the other proportional. This arrangement explains why New York and Nevada have each two Senators, while they have respectively thirty-four members and one member in the House of Representatives. This equality of representation in the Senate is the most unchangeable part of the National Government. The Constitution expressly provides that no State shall, without its own consent, ever be deprived of its equal suffrage in the Senate, which is equivalent to saying that it shall never be done at all. No such provision is found in relation to any other subject.

339. Qualifications of Representatives and Senators.—A Representative must be twenty-five years old, and must be a citizen of the United States of at least

seven years' standing. A Senator must be thirty years of age and must be nine years a citizen. The Representative and the Senator alike must be an inhabitant of the State in which he is elected or for which he is chosen. Previous absence from the State, even if protracted, as in the case of a public minister or consul to a foreign country, or a traveler, does not unfit a man to sit in either house. Representatives are not required by law to reside in their districts, but such is the custom.

No person can be a Senator or Representative, or an Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having once taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an Executive or Judicial officer of any State, to support the Constitution of the United States, has afterwards engaged in insurrection or rebellion against the same, or given assistance to their enemies. But Congress may remove this disability by a two-thirds vote of each house.

340. Regulation of Elections.—The times, places, and manner of electing Senators and Representatives are left, in the first instance, to the Legislatures of the States, but they are so left subject to the following rule: "Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators." Defending this rule in 1788, Mr. Hamilton said: "Every government ought to contain in itself the means of its own preservation; while it is perfectly plain that the States, or a majority of them, by failing to make the necessary regulations, or by making improper ones, could break up or prevent the first elections of the Houses of

Congress." The right to name the places where Senators shall be chosen is denied to Congress for a very sufficient reason. If Congress possessed that power it could determine, or at least largely influence, the location of the State capitals.

341. Elections of Senators.—Previous to 1866, the Legislature of every State conducted these elections as it pleased. Sometimes the two houses met in joint convention, a majority of the whole body determining the choice. Sometimes the two houses voted separately, a majority of each house being required to elect. It is obvious that the two methods might operate very differently. If the same political party had a majority in both houses, the result would probably be the same in either case; but if the two houses were controlled by different parties, then the party having the majority of votes on a joint ballot would probably elect the Senator. If the second plan was followed, and the two houses differed in regard to a choice, there were delays, and elections were sometimes attended by serious scandals. So Congress, in 1866, passed a law providing that the Legislature next preceding the expiration of a Senator's term, in any State, shall, on the second Tuesday after its meeting and organization, proceed to elect a Senator in the following manner:—

1. Each house votes, *viva voce*, for Senator. The next day at twelve o'clock the two houses meet in joint session, and if it appears from the reading of the journals of the previous day's proceedings that the same person has received a majority of all the votes cast in each house, he is declared duly elected.

2. If no election has been made, the joint assembly proceeds to vote, *viva voce*, for Senator, and if any person receive a majority of all the votes of the joint

assembly, a majority of all the members elected to both houses being present and voting, such person is declared duly elected.

3. If a choice is not made on this day, then the two houses must meet in joint assembly each succeeding day at the same hour, and must take at least one vote, as before, until a Senator is elected or the Legislature adjourns.

4. If a vacancy exists on the meeting of the Legislature of any State, said Legislature must proceed, on the second Tuesday after its meeting and organization, to fill such vacancy in the same manner as in the previous case; and if a vacancy occur when the session is in progress, the Legislature must proceed, as before, to elect on the second Tuesday after they have received notice of the vacancy.

342. Vacancies.—When a vacancy occurs in the recess of the Legislature of a State, owing to death or other cause, the Governor makes an appointment that continues until the next meeting of the Legislature, when the vacancy is filled in the usual manner. In all cases of vacancies the appointed or newly elected Senator only fills out the term of his predecessor.

343. Division of Senators.—The Senators are equally divided, or as nearly so as may be, into three classes with respect to the expiration of their terms, as follows:

Class 1, 1791, 1797.....1893, 1899

Class 2, 1793, 1799.....1895, 1901

Class 3, 1795, 1801..... 1897, 1903

The two Senators from a State are never put in the same class; and as the terms of the first Senators from a State now admitted to the Union expire with the terms of the classes to which they are assigned, one

or both of them may serve less than the full term of six years.

344. Electors of Representatives.—The persons who may vote for the most numerous branch of the State Legislature in any State, or the house of representatives, may also vote for members of the National House of Representatives. Usually, however, a State has only one rule of suffrage; that is, a person who may vote for members of the lower house of the State Legislature may vote also for all State and local officers. Practically, therefore, the rule is that State electors are National electors; or, in other words, the Constitution adopts for its purposes the whole body of the State electors, whoever they may be. In Wyoming, Colorado, and Utah women vote on the same terms and conditions as men. In Massachusetts, Connecticut, Maine, and Mississippi there is an educational qualification for the suffrage. But in most of the States males only twenty-one years of age and upwards, having certain prescribed qualifications, are permitted to vote.

345. Apportionment of Representatives in the Constitution.—The Constitution provides that members of the House of Representatives shall be apportioned among the several States according to their respective numbers. The original rule for determining these numbers was that all free persons, including apprentices or persons bound to service for a term of years, but excluding Indians not taxed (or Indians living in tribal relations), and three-fifths of all other persons, should be counted. The "other persons" were the slaves. The abolition of slavery and the practical disappearance of apprenticeship have considerably simplified matters. The Fourteenth Amendment to the Constitution provides that Representatives shall be apportioned according to

population, counting the whole number of persons in a State, excluding Indians who are not taxed. This rule is applied to the people of the States regardless of age, sex, color, or condition. The Constitution further provides that the number of Representatives shall not exceed one for every 30,000 people, but that every State shall have one Representative regardless of population.

346. The Census.—The Constitution of 1787 fixed the number of members of the House of Representatives at 65, and apportioned them among the States, as best it could, using the information in respect to population that was accessible. It also provided that an actual enumeration of the people should be made within three years of the first meeting of Congress, and that it should be repeated thereafter within every period of ten years. This enumeration was also called the census. In conformity with this provision, eleven decennial censuses of the United States have been taken, 1790, 1800, . . . 1890.

347. Method of Apportionments.—The decennial apportionment of members of the House is made by Congress, and that body has performed the duty in different ways. The apportionment of 1893 was made in the following manner: First, the House was conditionally made to consist of 356 members. Next, the population of the country, not counting the Territories, was divided by this number, which gave a ratio of 173,901. The population of every State was then divided by this ratio and the quotients added, giving 339. The numbers of Representatives indicated by these quotients were then assigned to the several States, and one Representative each in addition to the seventeen States having fractions larger than one-half the ratio, thus making the original number, 356. The admission of Utah has added one more.

When a new State comes into the Union, its Representative or Representatives are added to the number previously constituting the House.¹

348. Elections of Representatives.—For fifty years Congress allowed the States to elect their Representatives in their own way. The State Legislatures fixed the times and the places and regulated the manner of holding the elections; the elections were conducted without any regulation or control whatever being exercised by the National Government. Very naturally there were considerable differences of practice. In 1842 Congress first exercised its power of regulation. Three points must be noted:—

1. In 1842 Congress provided by law that, in every case where a State was entitled to more than one Representative, the members to which it was entitled should be elected by districts composed of contiguous territory equal in number to the number of Representatives to be chosen, no district electing more than one. It is, however, provided that when the number of Representatives to which a State is entitled has been diminished at any decennial apportionment, and the State Legislature has failed to make the districting conform to the change,

¹ The Numbers of the House and the Ratios of Representation are set down in the following table, with the period:

Period.	Size of House.	Ratio.
1789-1793	65	
1793-1803	105	33,000
1803-1813	141	33,000
1813-1823	181	35,000
1823-1833	212	40,000
1833-1843	240	47,700
1843-1853	223	70,680
1853-1863	234	93,503
1863-1873	241	127,941
1873-1883	292	130,533
1883-1893	332	151,911
1893	357	173,901

the whole number shall be chosen by the State as a unit and not by districts. It is also provided that if the number apportioned to any State is increased, and the Legislature fails to district the State, the old districting shall stand, but that the additional member or members shall be elected by the State as a whole. Representatives elected on a general ticket, and not by district tickets, from States having more than one member, are called Representatives-at-large. Since 1872 Congress has prescribed that the districts in a State must, as nearly as practicable, contain an equal number of inhabitants. Congress has never constituted the Congressional districts, as they are called, but has always left that duty to the State Legislatures. As a rule the division of the States into districts, when once made, is allowed to stand for ten years, or until a new apportionment is made; but not unfrequently it is changed, or the State is re-districted, as the saying is, for the sake of obtaining some political advantage. The operation called "gerrymandering"¹ is only too well known in American history.

2. In 1871 Congress enacted that all votes for members of the House of Representatives should be by printed ballots, and that rule has continued until the present day.

3. In 1872 Congress prescribed that the elections should be held on the Tuesday next after the first Monday in November in every even numbered year, 1874, 1876 . . . 1896, 1898, etc. Later legislation exempted from the

¹The *Century Dictionary* gives the following history of this word: "*Gerrymander*. In humorous imitation of *Salamander*, from a fancied resemblance of this animal to a map of one of the districts formed in the redistricting of Massachusetts by the Legislature in 1811, when Elbridge Gerry was Governor. The districting was intended (it was believed, at the instigation of Gerry), to secure unfairly the election of a majority of Democratic Senators. It is now known, however, that he was opposed to the measure."

operation of this rule such States as had prescribed a different day in their constitutions. Accordingly Oregon elects her Representatives the first Monday of June, Vermont hers the first Tuesday of September, and Maine hers the second Monday of the same month.

In nearly every case, if not indeed in every one, the State elects State officers at the same time that the elections of the National House of Representatives are held. Moreover, the elections of Representatives are conducted by the same officers that conduct the State elections. These officers count the votes and make the returns required by law. The Representative receives his certificate of election from the Governor of his State. If a vacancy occurs in any State, owing to any cause, the Governor issues a proclamation, called a writ of election, appointing a special election to fill the vacancy.

349. Compensation of Members of Congress.—Senators and Representatives receive a compensation from the Treasury of the United States. Congress fixes by law the pay of its own members, subject only to the President's veto.¹

¹The compensation at different times is exhibited in the following table:

1789-1815.....	\$ 6.00 a day.
1815-1817.....	1500.00 a year.
1817-1855.....	8 00 a day.
1855-1865.....	3000 00 a year.
1865-1871.....	5000.00 a year.
1871-1873.....	7500.00 a year.
1873-1896.....	5000.00 a year.

Save for a period of only two years, Senators and Representatives have always received a mileage or traveling allowance. At present this allowance is twenty cents a mile for the necessary distance traveled in going to and returning from the seat of government. The Vice-President, the President *pro tempore* of the Senate, and the Speaker of the House of Representatives now receive each a salary of \$8,000 a year.

350. Privileges of Members of Congress.—In all cases but treason, felony, and breach of the peace, Senators and Representatives are exempt from arrest during their attendance at the session of their respective houses and in going to and returning from the same. In other words, unless he is charged with one or more of the grave offenses just named, a member of either house cannot be arrested from the time he leaves his home to attend a session of Congress until he returns to it. Further, a Senator or Representative cannot be held responsible in any other place for any words that he may speak in any speech or debate in the house to which he belongs. This rule protects him against prosecution in the courts, even if his words are slanderous. Still more, speeches or debates, when published in the official report called “The Congressional Record,” are also privileged matter, and the speakers cannot be held accountable for libel. This freedom from arrest and this exemption from responsibility in respect to words spoken in the discharge of public duty, are not privileges accorded to the Senator and Representative in their own interest and for their own sake, but rather in the interest and for the sake of the people whom they represent. If they were liable to arrest for any trivial offense, or if they could be made to answer in a court of law for what they might say on the floor of Congress, the business of the country might be interfered with most seriously. The rights of legislative bodies must be rigidly maintained. The one rule given above is necessary to protect the freedom of representation, the other to protect the freedom of debate.

351. Prohibitions Placed Upon Members of Congress.—No Senator or Representative can, during the time for which he was elected, be appointed to any civil

office under the United States that is created, or the pay of which is increased, during such time. Appointments to many offices, and to all of the most important ones, are made by the President with the advice and consent of the Senate. Moreover, the President is always interested in the fate of measures that are pending before Congress, or are likely to be introduced into it. There is accordingly a certain probability that, if he were at liberty to do so, the President would enter into bargains with members of Congress, they giving him their votes and he rewarding them with offices created or rendered more lucrative for that very purpose. This would open up a great source of corruption. A Senator or Representative may, however, be appointed to any office that existed at the time of his election to Congress, provided the compensation has not been since increased. Still he cannot hold such office while a member of Congress. On the other hand, the Constitution expressly declares: "No person holding any office under the United States shall be a member of either house during his continuance in office."

352. Length of Congress.—The term Congress, is used in two senses. It is the name of the National Legislature as a single body, and it is also the name of so much of the continuous life of that body as falls within the full term of office of the Representative. We speak of Congress, and of a Congress. Thus there are a First, Second, . . . and Fifty-fourth Congress, filling the periods 1789-1791, 1791-1793 . . . 1895-1897. The length of a Congress was fixed when the Convention of 1787 made the Representative's term two years. The time of its beginning and ending was due to an accident. The Old Congress provided in 1788 for setting the new Government in operation; it named

the first Wednesday of March, 1789, as the day when the two Houses of Congress should first assemble, which happened to be the fourth day of that month. Thus a point of beginning was fixed and, as the rule has never been changed, our Congresses continue to come and go on the fourth of March of every other year. The present procedure is as follows: Representatives are chosen in November of every even year, 1892, 1894, 1896, while their terms, and so the successive Congresses, begin on March 4 of every odd numbered year, 1893, 1895, 1897.

While Representatives come and go together at intervals of two years, Senators come and go in thirds at the same intervals. The result is that while a House of Representatives lasts but two years, the Senate is a perpetual body.

353. Meeting of Congress.—Congress must assemble at least once every year, and such meeting is on the first Monday of December, unless by law it names another day. Hence every Congress holds two regular sessions. Furthermore, Congress may by law provide for special sessions, or it may hold adjourned sessions, or the President, if he thinks it necessary, may call the houses together in special session. As a matter of fact, all of these things have been done at different times. As the law now stands the first regular session of Congress begins on the first Monday of December following the beginning of the Representative's term, and it may continue until the beginning of the next regular session, and commonly does continue until midsummer. The second regular session begins the first Monday of December, but can continue only until March 4 of the next year, or until the expiration of the Representative's term. It is the custom to call these the long and the short sessions.

CHAPTER XXV

THE ORGANIZATION OF CONGRESS AND ITS METHOD OF DOING BUSINESS

*The American Government. Sections 275; 293-294; 312-323;
331-340.*

354. Officers of the Senate.—The Vice-President of the United States is President of the Senate, but has no vote unless the Senators are equally divided. The Senate chooses its other officers, the Secretary, Chief Clerk, Executive Clerk, Sergeant-at-Arms, Door Keeper, and Chaplain. The duties of these officers are indicated by their titles. The Senators also choose one of their number President *pro tempore*, who presides in the absence of the Vice-President or when he has succeeded to the office of President. The Senate is a perpetual body, and is ordinarily fully organized, although not in actual session, at any given time.

355. Officers of the House of Representatives.—The House chooses one of its members Speaker, who presides over its proceedings. It also chooses persons who are not members to fill the other offices, the Clerk, Sergeant-at-Arms, Postmaster, and Chaplain. The Speaker has the right to vote on all questions, and must do so when his vote is needed to decide the question that is pending. He appoints all committees, designating their chairmen, and is himself chairman of the important Committee on Rules. His powers are very great, and he is sometimes said to exercise as much

influence over the course of the Government as the President himself. The Speaker's powers cease with the death of the House that elects him, but the Clerk holds over until the Speaker and Clerk of the next House are elected, on which occasions he presides. It is common to elect an ex-member of the House Clerk.

356. The Houses Judges of the Election of their Members.—The Houses are the exclusive judges of the elections, returns, and qualifications of their members; that is, if the question arises whether a member has been duly elected, or whether the returns have been legally made, or whether the member himself is qualified, the house to which he belongs decides it. In the House of Representatives contested elections, as they are called, are frequent. As stated before, the Governor of the State gives the Representative his certificate of election, which is duly forwarded to Washington addressed to the Clerk of the House next preceding the one in which the Representative claims a seat. The Clerk makes a roll of the names of those who hold regular certificates, and all such persons are admitted to take part in the organization of the House when it convenes. Still such certificate and admission settle nothing when a contestant appears to claim the seat. The House may then investigate the whole case from its very beginning, and confirm the right of the sitting member to the seat, or exclude him and admit the contestant, or declare the seat vacant altogether if it is found that there has been no legal election. In the last case, there must be a new election to fill the vacancy. The Governor of the State also certifies the election of the Senator. A Senator-elect appearing with regular credentials is admitted to be sworn and to enter upon his duties, but the Senate is still at liberty to inquire into his election and qualifi-

cations, and to exclude him from his seat if, in its judgment, the facts justify such action. In respect to qualifications, it may be said that persons claiming seats, or occupying them, have been pronounced disqualified because they were too young, or because they had not been naturalized a sufficient time, or because they have been guilty of some misconduct. From the decision of the Houses in such cases there is no appeal.

357. Quorums.—The Houses cannot do business without a quorum, which is a majority of all the members; but a smaller number may adjourn from day to day, and may compel the attendance of absent members. Whether a quorum is present in the House of Representatives or not, is determined by the roll-call or by the Speaker's count. If a quorum is not present, the House either adjourns or it proceeds, by the method known as the call of the House, to compel the attendance of absentees. In the latter case officers are sent out armed with writs to arrest members and bring them into the chamber. When a quorum is obtained, the call is dispensed with and business proceeds as before. In several recent Congresses a rule has prevailed allowing the names of members who were present but who refused to vote to be counted, if necessary, for the purpose of making a quorum.

358. Rules of Proceedings.—Each house makes its own rules for the transaction of business. The rules of the Senate continue in force until they are changed, but those of the House of Representatives are adopted at each successive Congress. Still there is little change even here from Congress to Congress. Owing to the greater size of the body, the rules of the House are much more complex than the rules of the Senate. The rules of both Houses, like the rules of all legislative

assemblies in English-speaking countries, rest ultimately upon what is known as Parliamentary Law, which is the general code of rules that has been progressively developed by the English Parliament to govern the transaction of its business. Still many changes and modifications of this law have been found necessary, to adapt it to the purposes of Congress, and especially of the House of Representatives.

359. Power to Punish Members.—The Houses may punish members for disorderly behavior, and by a vote of two-thirds may expel members. These necessary powers have been exercised not unfrequently. In 1842 the House of Representatives reprimanded J. R. Giddings, of Ohio, for introducing some resolutions in relation to slavery; while the Senate in 1797 expelled William Blount, of Tennessee, for violating the neutrality laws, and in 1863 Mr. Bright, of Indiana, for expressing sympathy with the Southern secessionists. From the decisions of the Houses in such cases there is no appeal.

360. Journals and Voting.—The Houses are required to keep a full history of their proceedings in records called journals, and to publish the same except such parts as in their judgment require secrecy. But as the House of Representatives always sits with open doors, the provision in respect to secrecy has no practical effect in that body. It is also null in the Senate except in executive sessions. These are secret sessions held for the transaction of special business sent to the Senate by the President, as the consideration of treaties and nominations. The yeas and nays must be called, and must be entered on the journal, when such demand is made by one-fifth of the members present. The object of these rules is to secure full publicity in regard to what is done in Congress. On the call of the roll, which is the only

form of voting known in the Senate, members are entered as voting yea or nay, as absent or not voting. In the House votes are taken in three other ways: by the *viva voce* method, the members answering aye or no when the two sides of the question are put; by the members standing until the presiding officer counts them; by the members passing between two men called tellers, who count them and report the numbers of those voting on the one side and on the other, to the Chair.

361. Mode of Legislating.—A bill is a written or printed paper that its author proposes shall be enacted into a law. Every bill that becomes a law of the United States must first pass both Houses of Congress by majority votes of quorums of their members. Still more, this must be done according to the manner prescribed by the rules, which on this subject are very minute. For example, no bill or joint resolution can pass either house until it has been read three times, and once at least in full in the open house. The presiding officers of the two Houses certify the passage of bills by their signatures. When a bill has thus passed Congress it is sent to the President for his action, who may do any one of three things with it.

362. Action of the President.—1. The President may approve the bill, in which case he signs it and it becomes a law.

2. He may disapprove the bill, in which case he sends it back to the house that first passed it, or in which it originated, with his objections stated in a written message. In such case he is said to veto it. This house now enters the message in full on its journal and proceeds to reconsider the bill. If two-thirds of the members, on reconsideration, vote to pass the bill, it is sent to the other house, which also enters the message

on its journal and proceeds to reconsider. If two-thirds of this house also vote for the bill, it becomes a law notwithstanding the President's objections. The bill is now said to pass over the President's veto. In voting on vetoed bills the Houses must vote by yeas and nays, and the names of those voting are entered on the journal. If the house to which the bill is returned fails to give it a two-thirds vote, the matter goes no farther; if the second one fails to give it such vote, the failure is also fatal. In either case the President's veto is said to be sustained.

3. The President may keep the bill in his possession, refusing either to approve or disapprove it. In this case, it also becomes a law, when ten days, counting from the time that the bill was sent to him, have expired, not including Sundays. However, to this rule there is one important exception. If ten days do not intervene between the time that the President receives the bill and the adjournment of Congress, not counting Sundays, it does not become a law. Accordingly the failure of the President to sign or to return a bill passed within ten days of the adjournment defeats it as effectually as a veto that is sustained by Congress could defeat it. The President sometimes takes this last course, in which case he is said to "pocket" a bill or to give it a "pocket" veto.

363. Orders, Resolutions, and Votes. — Every order, resolution, or vote to which the concurrence of both Houses of Congress is necessary, save on questions of adjournment, must be sent to the President for his approval. This rule prevents Congress enacting measures to which the President may be opposed by calling them orders, resolutions, or votes and not bills. Still the resolutions of a single house, or joint resolutions that merely declare opinions and do not enact legislation, are not subject to this rule. Nor is it necessary for the Pres-

ident to approve resolutions proposing amendments to the Constitution of the United States.

364. The Committee System.—To a great extent legislation is carried on in both Houses by means of committees. These are of two kinds. Standing committees are appointed on certain subjects, as commerce, the post-office, and foreign affairs, for a Congress. Special committees are appointed for special purposes. The House of Representatives has more than fifty standing committees; the Senate not quite so many. All House committees are appointed by the Speaker. Senate committees are elected by the Senators on caucus nominations. The standing committees of the House consist of from three to seventeen members; of the Senate from two to thirteen. The committees draw up bills, resolutions, and reports, bringing them forward in their respective houses. To them also bills and resolutions introduced by single members are almost always referred for investigation and report before they are acted upon in the house.

365. Adjournments.—The common mode of adjournment is for the two Houses to pass a joint resolution to that effect, fixing the time. The President may, in case of a disagreement between the Houses respecting the time of adjournment, adjourn them to such time as he thinks proper; but no President has ever had occasion to do so. Neither House, during the session of Congress, can, without the consent of the other, adjourn for more than three days, or to any other place than the one in which Congress shall be sitting at the time. It is therefore practically impossible for the two Houses to sit in different places, as one in Washington and the other in Baltimore. As is elsewhere explained, the Senate may sit alone to transact executive business, if it has been convened for that purpose.

CHAPTER XXVI

THE IMPEACHMENT OF CIVIL OFFICERS

The American Government. Sections 302 311; 484.

366. Impeachment Defined.—In the legal sense, an impeachment is a solemn declaration by the impeaching body that the person impeached is guilty of some serious misconduct that affects the public weal. In the United States, the President, Vice-President, and all other civil officers are subject to impeachment for treason, bribery, or other high crimes and misdemeanors. In England, military officers and private persons may be impeached as well as civil officers. The other crimes and misdemeanors mentioned in the Constitution are not necessarily defined or prohibited by the general laws. In fact, few of them are so treated. Impeachment is rather a mode of punishing offenses that are unusual, and that, by their very nature, cannot be dealt with in the general laws. Thus Judge Pickering was impeached in 1803 for drunkenness and profanity on the bench, and Judge Chase the next year for inserting criticisms upon President Jefferson's administration in his charge to a grand jury, while President Johnson was impeached in 1867, among other things, for speaking disparagingly of Congress. But none of these acts were prohibited by the laws. Senators and Representatives are exempt from impeachment.

367. The Power of the House.—The House of Representatives has the sole power of impeachment, as

the House of Commons has in England. The following are the principal steps to be taken in such case. The House adopts a resolution declaring that Mr. — be impeached. Next it sends a committee to the Senate to inform that body of what it has done, and that it will in due time exhibit articles of impeachment against him and make good the same. The committee also demands that the Senate shall take the necessary steps to bring the accused to trial. Then the House adopts formal articles of impeachment, defining the crimes and misdemeanors charged, and appoints a committee of five managers to prosecute the case in its name, and in the name of the good people of the United States. These articles of impeachment are similar to the counts of an indictment found by a grand jury in a court of law.

368. The Power of the Senate.—The action of the House of Representatives settles nothing as to the guilt or innocence of the person accused. The Constitution places the power to try impeachments exclusively in the Senate, as in England it is placed exclusively in the House of Lords. So when the House has taken the first step described in the last paragraph, the Senate takes the action that is demanded. It fixes the time of trial, gives the accused an opportunity to file a formal answer to the charges that have been made against him, and cites him to appear and make final answer at the time that has been fixed upon for the trial. The Senators sit as a court, and when acting in such a capacity they must take a special oath or affirmation. When the President is tried, the Chief Justice presides. No person shall be convicted unless two-thirds of the Senators present vote that he is guilty of one or more of the offenses charged. As the Vice-President would have a personal interest in the issue should the President be put on trial, owing to

the fact that the Vice-President succeeds to the presidency in case of the removal of the President, it would manifestly be a gross impropriety for him to preside in such case. He would be in a position to influence the verdict.

369. The Trial.—The Senate sits as a court, as before explained. The ordinary presiding officer occupies the chair on the trial, save in the one excepted case of the President. At first the House of Representatives attends as a body, but afterwards only the five managers are expected to attend. The accused may attend in person and speak for himself; he may attend in person, but entrust the management of his cause to his counsel; he may absent himself altogether, and either leave his cause to his counsel or make no defense whatever. Witnesses may be brought forward to establish facts, and all other kinds of legal evidence may be introduced. The managers and the counsel of the accused carry on the case according to the methods established in legal tribunals. When the case and the defense have been presented, the Senators discuss the subject in its various bearings, and then vote yea or nay upon the various articles that have been preferred. The trial is conducted with open doors, but the special deliberations of the Senate are carried on behind closed doors. A copy of the judgment, duly certified, is deposited in the office of the Secretary of State.

370. Punishment in Case of Conviction.—The Constitution declares that judgment in cases of conviction shall not go further than to work the removal of the officer convicted from his office, and to render him disqualified to hold and enjoy any office of honor, trust, or profit under the United States. It declares also that all persons who are impeached shall be removed from office

on conviction by the Senate. Here the subject is left. It is therefore for the Senate to say whether, in a case of conviction, the officer convicted shall be declared disqualified to hold office or not, in the future, and this is as far as the discretion of the Senate extends. Whatever the punishment may be, it is final and perpetual. The President is expressly denied the power to grant reprieves and pardons in impeachment cases. This is because such power, once lodged in his hands, would be peculiarly liable to abuse. But this is not all. If the crimes or misdemeanors of which an officer has been convicted are contrary to the general laws, he is still liable to be indicted, tried, judged, and punished by a court of law just as though he had not been impeached.

371. Impeachment Cases.—There have been but seven such cases in the whole history of the country. William Blount, Senator from Tennessee, 1797–98; John Pickering, District Judge for New Hampshire, 1803–1804; Samuel Chase, Justice of the Supreme Court, 1804–1805; James Peck, District Judge for Missouri, 1829–1830; W. W. Humphreys, District Judge for Tennessee, 1862; Andrew Johnson, President of the United States, 1867; W. W. Belknap, Secretary of War, 1876. Only Pickering and Humphreys were found guilty.

CHAPTER XXVII

THE GENERAL POWERS OF CONGRESS

The American Government. Sections 341-418.

In a free country the legislative branch of the government tends to become the most powerful of all the branches, overtopping both the executive and the judiciary. This is true in the United States. The powers of Congress are divisible into general and special powers, of which the first are by far the more important. The general powers are described in section 8, Article 1, of the Constitution, and occupy eighteen clauses. They will now be described.

372. Taxation.—Revenue is the life blood of government. The first Government of the United States failed miserably, and largely because it could not command money sufficient for its purposes. When the present Government was constituted, good care was taken to guard this point. It was clothed with the most ample revenue powers. Congress may, without limit, lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States. These taxes are of two kinds, direct and indirect. Direct taxes are taxes on land and incomes and poll or capita-tion taxes. Here the taxes are paid by the person owning the land or enjoying the income. Taxes on imported goods, called custom duties and sometimes imposts, and taxes on liquors paid at the distillery or brewery, and on cigars and tobacco paid at the factory, are indirect taxes. Here the tax is added to the price of the article

by the person who pays it in the first instance, and it is ultimately paid by the consumer. Taxes of the second class are collectively known as internal revenue to distinguish them from customs or duties, which might be called external revenue. The term excise, used in the Constitution, but not in the laws, applies to this great group of taxes. They are collected through the Internal Revenue Office in the Treasury Department. Direct taxes have been levied only five times by the National Government. Customs and internal revenue have always been its great resources.

373. Special Rules.—In levying taxes Congress must conform to several rules that the Constitution prescribes. All taxes must be uniform throughout the United States. In legislating on commerce and revenue, Congress must take care not to show a preference for the ports of one State over those of another State. Direct taxes, like Representatives, must be apportioned among the States according to population. And finally, no tax or duty can be laid on any article of commerce exported from any State.

374. Borrowing Money—Bonds.—Public expenditures cannot always be met at the time by the public revenues. It becomes necessary in emergencies for governments to borrow money and contract debts. Congress borrows money on the credit of the United States. The principal way in which it exercises this power is to sell bonds. These bonds are the promises or notes of the Government, agreeing to pay specified amounts at specified times at specified rates of interest. During the Civil War more than five billion dollars of such bonds were sold, many of them to replace others that were cancelled. At the present time a large amount of Government bonds is outstanding.

375. Treasury Notes.—Congress also authorizes the issue of Treasury notes, called by the Constitution “bills of credit.” They are paid out by the Treasury to meet the expenses of the Government, and while they continue to circulate they constitute a loan that the people who hold them have made to the Government. Such notes were occasionally issued before the Civil War, and since that event they have played a very important part in the history of the National finances. In 1862 Congress authorized the issuance of Treasury notes that should be a legal tender in the payment of all debts, public and private, except duties on imports and interest on the National debt. These notes were not payable on demand, or at any particular time; they did not bear interest, and were not for the time redeemable in gold or silver, which, since 1789, had been the only legal-tender currency of the country. In 1879 the Treasury, in obedience to a law enacted several years before, began to redeem these notes in gold on presentation, and it has continued to do so until the present time. Still they have never been retired from circulation, or been cancelled on redemption, but have been paid out by the Treasury the same as other money belonging to the government. They are popularly called “greenbacks.”

376. Commerce.—Congress has power to regulate commerce with foreign nations, among the States, and with the Indian tribes. The exclusive control of commerce by the States, under the Confederation, was a principal cause of the hopeless weakness of that government. (See Chap. XX.) It may indeed be said that the commercial necessities of the country, more than anything else, compelled the formation of the new Government in 1789. Tariff laws, or laws imposing duties on imported goods, are regulations of commerce, and so are laws

imposing tonnage duties, or duties on the carrying capacity of ships, and laws prescribing the manner in which the foreign trade of the country shall be carried on. The construction or improvement of harbors, the building of lighthouses, surveys of the coasts of the country, and laws in relation to emigration all come under the same head. In order the better to regulate commerce among the States, Congress created the Interstate Commerce Commission, and it has passed a law in relation to the subject of trusts. The Constitution lays down the rule relating to Interstate commerce that vessels bound to or from one State to another shall not be required to enter or clear, or to pay duties.

377. Naturalization.—All persons born or naturalized in the United States and subject to their jurisdiction are citizens of the United States, and of the State in which they reside. Citizenship, or the state of being a citizen, is membership in the state, or body politic. Congress has provided that a foreigner, unless he belongs to the Mongolian race, may become a citizen, or be naturalized, as the saying is, on his compliance with certain terms and conditions. A residence of five years is necessary. Two years before his admission to citizenship the alien must declare on oath, before a court of record, his intention to become a citizen. On the expiration of the two years, he must prove to this court, or some other one having the same jurisdiction, that he has resided in the United States at least five years, and in the State or Territory at least one year; that he is a man of good moral character; that he is attached to the Constitution, and that he is well disposed to the United States. He must also swear to support the Constitution, must renounce all allegiance to any foreign state or prince,

and lay aside any title of nobility that he has held. He then receives a certificate stating that he is a citizen of the United States, and he becomes entitled to all the rights of a native-born citizen, except that he can never be President or Vice-President. His wife and his children under twenty-one years of age also become citizens. All laws in relation to naturalization must be uniform. The States may confer political rights upon foreigners, as the right to own land and vote within the State, but they cannot confer citizenship.

378. Bankruptcies.—A person who is insolvent, or unable to pay his debts, is termed a bankrupt; and a law that divides the property of such person among his creditors and discharges him from legal obligation to make further payment, is termed a bankrupt law. Congress has power to pass uniform laws in relation to this subject. It has passed three such laws, one in 1800, one in 1840, and one in 1867. The last one was repealed in 1878. The States sometimes pass insolvent laws, having somewhat the same effect as bankrupt laws, but they are always subject to the National bankrupt law when there is one in force.

379. Coinage of the United States.—Congress coins money and regulates its value and the value of foreign coin circulating in the country. This power, taken in connection with other powers, enables Congress, if it chooses, to regulate the whole subject of money. At the present time the National mints are open to all persons for the coinage of gold. Depositors of standard gold are charged merely the value of the copper used in alloying the coin. The gold coins of the Government are the double-eagle, eagle, half-eagle, quarter-eagle, three-dollar piece, and one-dollar piece. These coins are legal tender in payment of all debts, public and

private.¹ Silver coins are now struck at the mints only on account of the Government, and not on account of private persons. These coins are the half-dollar, quarter-dollar, and dime, which are legal tender for debts not exceeding ten dollars. The Government also strikes coins of base metal for small change; the five-cent piece and the one-cent piece, which are legal tender in sums not exceeding twenty-five cents. At different times still other coins have been struck, and some of them are still in circulation. Mention may be made of the dollar, the trade dollar, the two-cent piece, and the half-dime.

380. The Silver Dollar.—The silver dollar was the original money-unit of the United States. It was coined, though never in very large quantities, from the founding of the mint in 1792 until 1873, when it was dropped from the list of legal coins. This fact is expressed in the phrase, “silver was demonetized.” The minor silver coins, however, were produced as before. Congress also authorized for several years a new coin, called the trade dollar. In 1878 Congress restored the old silver dollar to the list of authorized coins, and instructed the Secretary of the Treasury to purchase silver bullion for the Government and to coin it into dollars, not less than \$2,000,000, nor more than \$4,000,000, a month. These dollars were also made a legal tender. In 1890 Congress passed a further act instructing the Secretary to purchase 4,500,000 ounces of silver a month on Government account, as before, and to coin it after July, 1891, at his discretion. In 1893 Congress repealed the purchase clause of the previous act, and the further

¹ Legal-tender money is money with which a debtor can legally pay a debt; that is, if he offers or tenders this money to his creditor, and his creditor refuses to take it, he is not obliged to make other payment.

coinage of silver dollars was discontinued. At no time since 1873 have private persons been permitted to deposit silver at the mints for coinage.

381. Fineness and Weight of Coins and Ratio of Metals.—The gold and silver coins of the United States are nine-tenths fine; that is, nine parts of the coins are pure metal and one part is alloy. This is called standard metal. Since 1834, the gold dollar has contained 23.2 grs. of pure metal and 25.8 grs. of standard metal. Since 1792 the silver dollar has contained $371\frac{1}{4}$ grs. of pure metal, and since 1837, $412\frac{1}{2}$ grs. of standard metal. It is common to call the last named coin the $412\frac{1}{2}$ gr. dollar. The amount of pure silver in a dollar's worth of the minor coins is 347.22 grs., and of standard silver 385.8 grs. The ratio of the gold dollar to the silver dollar is popularly said to be 1 to 16. Exactly it is 1 to 15.988. This has been the legal ratio since 1834. When it was established Congress assumed that 16 grs. of silver (nearly so) were equal to one grain of gold in value.

382. Gold and Silver Certificates.—To dispense with the necessity of handling so much metallic money, Congress has provided for the issuance of gold and silver certificates. One of these certificates is simply a statement that in consequence of the deposit of — dollars of gold or silver, as the case may be, in the Treasury, the Government will pay the holder of the certificate the corresponding amount. These certificates pass as money, but are not a legal tender.

383. Counterfeiting.—Congress provides by law for punishing counterfeiting the coin and securities of the United States, its notes, bonds, etc. The term counterfeiting includes (1) manufacturing or forging coins or paper securities; (2) putting forged coins or securities in circulation; and (3) having them in possession for

that purpose. A person guilty of any one of these three offenses is punishable on conviction by a fine of not more than \$5,000 and by imprisonment at hard labor for not more than ten years. Counterfeiting the notes of the National banks, letters patent, money orders, postal cards, stamped envelopes, etc., is punishable by severe penalties; as is also counterfeiting the coins and securities of foreign governments.

384. The Independent Treasury.—Previous to 1846, save for a short period, the Government had no treasury of its own, but kept its money in the banks and checked it out as it had occasion. In the year named a treasury was established in the Treasury Building at Washington, provided with rooms, vaults, and safes, and a Treasurer was appointed. Subtreasuries were also established in the principal cities of the country and put in charge of officers known as Subtreasurers. Subtreasuries are now to be found in New York, Boston, Charleston, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, and San Francisco.

385. The National Banks.—In 1863 and 1864 Congress provided for the creation of the present system of National banks, which have played so important a part in the business of the country. These banks are directly managed by boards of directors chosen by their stockholders, but they are supervised by the Comptroller of the Treasury, whose office is established in the Treasury Department. Their notes or bills, which are fully secured by National bonds belonging to the banks that are deposited in the office of the Comptroller at Washington, constitute a National currency.

386. Weights and Measures.—Congress has power to fix the standard of weights and measures, but has never fully exercised the power. In general the standards in

use are the same as those in use in England. The English brass Troy pound is the legal Troy pound at the mints, while the Imperial avoirdupois pound and the wine gallon rest upon usage. Congress has authorized the use of the metric system of weights and measures, but has not made it compulsory.

387. The Postal Service.—Congress has created the vast postal system of the country, the cost of which in the year 1894 was more than \$84,000,000. The mails are carried by contractors. Postmasters paid \$1,000 or more a year are appointed by the President for a term of four years; all others by the Postmaster-General at his pleasure. A great majority of the postmasters do not receive regular salaries, but a percentage on the income of their offices. Towns having gross post-office receipts of \$10,000 or more have free mail delivery by letter-carriers. In towns of 4,000 inhabitants or more letters bearing a special 10-cent stamp are delivered by a special carrier immediately on their receipt. Letters may also be registered to secure their greater safety in delivery on payment of a 10-cent fee. Money orders are also sold by certain post-offices called money-order offices, which to a limited extent take the place of money in the transaction of business.

388. Rates of Postage.—There are four classes of domestic mail matter bearing different rates of postage. All postage must be pre-paid in the form of stamps.

1. Letters, postal cards, and other written matter, and all packages that are closed to inspection. Save on postal cards and drop letters mailed at non-delivery offices, the rate is two cents an ounce or fraction of an ounce.

2. Periodicals, magazines, etc. The rate on matter of this class when sent from a registered publishing

office, or a news agency, is one cent a pound; when sent otherwise, it is one cent for every four ounces.

3. Books, authors' copy accompanying proof-sheets, etc., are charged one cent for two ounces or fraction of the same.

4. Merchandise limited to 4-pound packages is charged one cent an ounce.

389. Copyrights and Patent Rights.—For promoting science and the arts, Congress provides that authors may copyright their works and inventors patent their inventions for limited times. The author of a book, chart, engraving, etc., by means of a copyright, enjoys the sole liberty of printing, publishing, and selling the same for twenty-eight years, and on the expiration of this time he, if living, or his wife or his children if he be dead, may have the right continued fourteen years longer. An inventor also, by means of letters patent, enjoys the exclusive right to manufacture and sell his invention for seventeen years, and on the expiration of that period the Commissioner of Patents may extend the right, if he thinks the invention sufficiently meritorious. Copyrights are obtained from the head of the Library of Congress, patent rights from the head of the Patent Office, both at Washington. The cost of a copyright is one dollar and two copies of the book or other work. The cost of a patent right is \$35.00. Every article that is copyrighted or patented must be appropriately marked.

390. Piracies and Felonies.—Congress defines the punishment of piracies and felonies on the high seas, and offenses against the Law of Nations. In a general sense piracy is robbery or forcible depredation of property on the seas, but Congress has by law declared some other acts, as engaging in the slave trade, to be piracy.

Felonies, strictly speaking, are crimes punishable by death. The Law of Nations is a body of rules and regulations that civilized nations observe in their intercourse one with another. The high seas are the main sea or ocean, which the law of nations limits by a line drawn arbitrarily at one marine league, or three miles, from the shore.

391. Powers of Congress in Relation to War.—Congress has the power to declare war, which in monarchical countries is lodged in the Crown. It raises and supports armies. It provides a navy. It makes rules for the government of the army and navy. It provides for calling out the militia of the States to execute the laws of the Union, to suppress insurrection, and repel invasion. It provides for organizing, arming, and disciplining the militia, and for the government of such of them as may be called into the service of the United States; but the States have authority to appoint the officers and to train the militia according to the discipline that Congress has prescribed. These powers are very far-reaching. Acting under the laws of Congress, President Lincoln, in the course of the Civil War, called into the service of the Union fully 3,000,000 men. A navy counting hundreds of vessels was also built. At present the army consists of 25,000 officers and enlisted men. The navy consists of 38 vessels in commission for sea service. At present the highest title in the army is General, the highest in the navy Rear-Admiral. The soldiers of the United States are divided into the regular troops and the militia. The former are in constant service; the latter are the citizen soldiery enrolled and organized for discipline and called into service only in emergencies. In the fullest sense of the word, the militia are the able-bodied male citizens of the States

between the ages of eighteen and forty-five. The President cannot call them into active service for a longer period than nine months in any one year. In service, they are paid the same as the regular troops.

392. The Federal District.—Previous to 1789 the United States had no fixed seat of government, and Congress sat at several different places. The resulting evils led the Convention of 1787 to authorize Congress to exercise an exclusive legislation over a district, not more than ten miles square, that particular States might cede and Congress might accept for a capital. The cession of Maryland and the acceptance of Congress made the District of Columbia the Federal District, and an act of Congress made Washington the Capital of the Union. The various branches of the Government were established there in 1800. The District is now governed by a board of three commissioners, two appointed by the President and Senate, and one an engineer of the army who is detailed by the President for that purpose. Congress pays one-half the cost of government, the people of the District the other half. Congress also has jurisdiction over places within the States that have been purchased for forts, arsenals, magazines, dock-yards, and other needful public buildings.

393. Necessary Laws.—It must be borne in mind that the government of the United States is a government of delegated powers. Still these powers are not all expressly delegated. There are powers delegated by implication, as well as powers delegated in words. Congress is expressly authorized to make all laws that are necessary for carrying into effect the powers that have been described above, and all other powers that the Constitution vests in the Government of the United States, or any department or officer of that Government.

Congress, improves harbors, erects lighthouses, builds post-offices and custom houses, and does a thousand other things that are not particularly named in the Constitution, because in its judgment they are necessary to the execution of powers that are particularly named. The power to establish post-roads and post-offices, for example, or to create courts, involves the power to build buildings suitable for these purposes. This is known as the doctrine of implied powers.

Looking over the general powers of legislation that are vested in Congress, described above, we see how necessary they are to a strong and efficient government. They are the master power, the driving force, of our whole National system. If these eighteen clauses were cut out of the Constitution, that system would be like a steamship without an engine.

CHAPTER XXVIII

ELECTION OF THE PRESIDENT AND THE VICE-PRESIDENT

The American Government. Sections 446-474.

It is the business of the Executive Department of the Government to enforce the laws that the Legislative Department makes. Government in a free country begins with law-making, but it ends with law-enforcing. We are now to examine in two or three chapters the National Executive.

394. The Presidency.—Congress consists of two Houses, and each house consists of many members, but the Executive office is single, entrusted to one person. The Constitution vests the executive power in the President of the United States. This difference is due to the nature of the things to be done. Legislation demands varied knowledge, comparison of views, and deliberation. Administration calls for vigor, unity of purpose, and singleness of responsibility. The burden of National administration is imposed upon the shoulders of one man.

395. Presidential Electors.—The President and the Vice-President are elected by Electors appointed for that purpose. Each State appoints, in such manner as its Legislature may determine, a number of Electors equal to the whole number of its Senators and Representatives in Congress. Early in the history of the Government, different modes of appointing Electors were followed. Since the Civil War, with a single exception, there has been only one mode. All the States now proceed in the same way. This is to submit the question to

the people of the States at a popular election. With this point clearly in mind, we shall go forward to describe the whole series of steps that are taken in electing the President and the Vice-President of the United States.

396. Presidential Nominations.—Government in the United States, as in other free countries, is carried on by means of political parties. These party organizations desire to elect the President and control the Government. They hold National conventions, generally in the period June–August of the year before a President is to take his seat, to nominate candidates for President and Vice-President, and to adopt a statement of party doctrines or principles called a platform. These conventions are constituted under fixed rules, and are convoked by National committees. The Republican and Democratic conventions consist each of four delegates-at-large from every State, and twice as many district delegates as the State has members in the House of Representatives. As a rule the delegates-at-large are appointed by State party conventions, and the district delegates by district conventions. In the Republican convention a majority vote suffices to nominate candidates; in the Democratic convention the rule is two-thirds.

397. Electoral Tickets.—The next step is to make up the State Electoral tickets. First, State conventions name two Electors for the State called Electors-at-large, or Senatorial Electors. The conventions that name the delegates-at-large to the National conventions may, and often do, name also the candidates for Electors-at-large. Next district Electors are put in nomination, one from a Congressional district, generally by district conventions. The names of the candidates put in nomination by a given party brought together constitute the State

party ticket. No Senator or Representative, or other person holding an office of trust or profit under the United States, can be appointed an Elector.

The two steps that have been described belong wholly to the field of voluntary political action. The Constitution and the laws have nothing whatever to do with them.

398. Choice of Electors.—Congress fixes the day upon which the Electors are chosen. It is the same in all States, Tuesday following the first Monday of November, the day on which members of the House of Representatives are generally elected. Persons who may vote for State officers and for Representatives may also vote for Electors. State officers conduct the election, and the Governor gives the successful candidates their certificates of election. The appointment of the Electors is popularly called the Presidential election. It is so in fact but not in law. In point of law the people do not elect the President and the Vice President, but only Electors who elect them. In point of fact, as we shall soon see, they do both. All that the National authority has done up to this point is to fix the time of the appointment of Electors. Hereafter that authority directs every step in the process.

399. Meeting of the Electors.—On the second Monday of January, following their appointment, the Electors meet at their respective State capitals to vote for President and Vice-President. They name in their ballots the person for whom they vote as President, and in distinct ballots the person for whom they vote as Vice-President. No Elector can vote for persons for both offices from the same State that he himself resides in: one at least of the two candidates must belong to another State. The voting over, the Electors make distinct lists

of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they sign, certify, and seal. Three copies of these lists are made. Two of them they send to Washington addressed to the President of the Senate, one by mail and one by a special messenger. The other copy they deliver to the Judge of the United States District Court for the district in which they meet and vote. Congress by law names the day on which the Electors give their votes, and it must be uniform throughout the Union. The casting of their ballots by the Electors is the formal but not the real Presidential election.

400. Counting the Electoral Votes.—On the second Wednesday of February, the day named by Congress, the Senate and the House of Representatives meet in the hall of the House to witness the counting of the Electoral votes. The President of the Senate presides, the Speaker of the House sitting by his side. He opens the certificates of votes and hands them to tellers appointed by the Houses, who read and count the votes. The President of the Senate declares the result. The person having the greatest number of votes cast for President, if a majority of all, is declared President; the person having the greatest number of votes for Vice-President, if a majority of all, is declared Vice-President.

401. Election of the President by the House.—If no person has received for President the votes of a majority of all the Electors appointed, the House of Representatives must immediately choose the President from the three candidates who have had the most votes for that office. This election is by ballot. The votes are taken by States, the Representatives from a State having one vote. Nevada balances New York, Delaware Pennsylvania. A quorum to conduct the election consists of a member

or members from two-thirds of the States, and a majority of all the States is necessary to a choice. Twice has the House of Representatives chosen the President, Thomas Jefferson in 1801 and John Quincy Adams in 1825. Both of these elections were attended by great excitement.

If the House fails to choose a President, when the choice devolves upon that body, by March 4 following, then the Vice-President acts as in the case of death, removal, or resignation of the President.

402. Election of the Vice-President by the Senate.—If no person voted for as Vice-President has a majority of all the Electors appointed, then the Senate shall choose to that office one of the two candidates standing highest on the list of candidates for the Vice-Presidency. A quorum for this purpose consists of two-thirds of the whole number of Senators, and a majority of all the Senators is necessary to a choice.

403. Miscellaneous Provisions.—The Electors appointed from a State are often called a college; the Electors from all the States the Electoral colleges. Most of the States have empowered their colleges to fill vacancies that may occur in their number. In 1887 Congress passed an act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon. This law gives the States jurisdiction over disputed appointments of Electors. It also prescribes the method of proceeding when plural returns are made from any State and in cases where objections are made to a single return.¹

¹ The method of electing President and Vice-President outlined above, is that prescribed by the Constitution as originally framed, together with the Twelfth Amendment. For the change introduced by this Amendment, see the Amendment in connection with Article II, section 1, clause 3, of the Constitution at first framed.

404. The Electoral System.—When the framers of the Constitution devised the method of election by means of Electoral colleges, they assumed that the Electors would be picked bodies of men, who would vote for the best men for President and Vice-President, regardless of popular feeling and private interest. It may be said that in the case of Washington the plan worked as they expected, but since his second administration it has never done so. No other part of the Constitution has proved so disappointing as the method of electing the President. In 1804 the Constitution was amended to correct evils that had declared themselves in the election of 1800; but the Twelfth Amendment, while accomplishing its immediate purpose, did not prevent the whole plan becoming a miserable failure. The men of 1787 did not foresee the part that politics and political parties would play in American affairs. As we have seen, the President and Vice-President are really named by one of the two great political conventions. The Electors are not chosen to exercise their own best judgment, but to cast their ballots for the party candidates. When once elected, the Electors are not legally bound to vote for these candidates, for the Constitution and laws make no mention of parties and conventions; but they are bound as party men and as men of honor, for they have consented to be elected on this understanding. As the system works, they have no free will whatever, and practically the Electoral colleges are pieces of useless political machinery.

CHAPTER XXIX

THE PRESIDENT'S QUALIFICATIONS, TERM, AND REMOVAL

The American Government. Sections 450; 476-482.

405. Qualifications.—The President must be a natural-born citizen of the United States. He must have attained the age of thirty-five years, and have been a resident of the country fourteen years at the time of his election. The Vice-President must have the same qualifications as the President.

406. Length of Term.—The term of office of both the President and the Vice-President is four years, and the two officers are eligible to successive re-elections. It has often been contended that it would be better to give the President a term of six or seven years, and then make him ineligible to a second election.

407. The President's Salary.—This is fixed by Congress. From 1789 to 1873 it was \$25,000 a year; since 1873 it has been \$50,000. Congress also provides the President the furnished house known as the White House for an official residence. The President's salary can neither be increased nor diminished after he has entered on the duties of his office. The first of these two prohibitions makes it impossible for him to enter into bargains with members of Congress, whereby they shall receive something that they deem desirable, at the same time that his compensation is increased. The second prohibition makes it impossible for Congress to reduce his compensation, and so to make the President its dependent or creature. All changes in the salary must therefore be prospective. Still further, the President cannot, during

his continuance in office, receive any other public emolument than his salary, such as a gift or present from the United States or from any State. The salary of the Vice-President is \$8,000.

408. The President's Oath. — Before entering on the duties of his office, the President must take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." This oath is in general a definition of the President's duties. He is exclusively an executive officer. The occasion on which the President takes this oath is popularly called his inauguration, and is marked by a good deal of parade and ceremony. The custom now is to conduct the inauguration on the East Front of the Capitol at Washington. The Chief Justice administers the oath, and the President delivers an address called his inaugural address. With the exception of the oath, none of these ceremonies are required by the Constitution or the laws, and they might be dispensed with. It is also customary for the Vice-President to take his oath in the Senate Chamber and to deliver a short speech to the Senators.

409. The Vice-President. — The only reason for creating the office of Vice-President was to have a proper officer at hand who could succeed to the Presidency in the case of a vacancy. The Vice-President becomes President when the President is removed, dies, resigns, or is unable to discharge the powers and duties of his office. The President can be removed only by conviction on impeachment. If he resigns he must file his resignation in writing in the office of the Secretary of State. Just what inability to discharge the duties of his office is, has never

been settled. President Garfield performed but one executive act from July 2, 1891, to his death, which occurred September 19 following. It was much discussed at the time whether a case of inability had arisen, but with no practical results. Four Vice-Presidents have become Presidents by succeeding to the office. When the Vice-President becomes President, he succeeds to all the powers, dignities, responsibilities, and duties of the office for the unexpired portion of the term and ceases to be Vice-President. The Constitution provides that the Vice-President shall be the President of the Senate, but this is merely for the purpose of giving dignity and consequence to an officer who, for the most part, would otherwise have nothing to do.

410. The Presidential Succession. — Who shall succeed to the Chief Executive office in case both the President and Vice-President die, resign, are removed, or are unable to perform the duties of the office? The Constitution says that Congress shall by law provide for such a case, declaring what officer shall act as President until the disability be removed or a President be elected. The present law, which dates from 1886, declares that first the Secretary of State shall succeed, then the Secretary of the Treasury in case of his death, removal, etc.; afterwards the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior in this order. No one of these officers, however, can succeed unless he has been confirmed by the Senate and has all the qualifications that are required of the President. If one of them succeeds he fills the unexpired portion of the term the same as the Vice-President. However, a case of the removal, etc., of both the President and the Vice-President has never yet occurred.

CHAPTER XXX

THE PRESIDENT'S POWERS AND DUTIES

The American Government. Sections 483-511.

As is remarked in another place, the oath that the President takes on his inauguration is a general definition of his duties. Still the Constitution declares further that he shall take care that the laws be faithfully executed, and shall commission all officers of the United States. More than this, it describes his duties with more or less detail.

411. *Army and Navy.*—The President is commander-in-chief of the army and navy of the United States, and of the Militia of the States also when they are called into the National service. The effective control of the National forces requires unity of judgment, decision, and responsibility. It is obvious that a congress or a cabinet would be a very poor body to place at the head of an army. The power entrusted to the President is a great one, but he cannot well abuse it so long as Congress alone can declare war, raise and support the army, provide the navy, make rules for the government of the military and naval forces, and provide by law under what conditions the President may call out the militia. The President delegates to chosen officers his authority to command the army and the navy in actual service.

412. *The Pardoning Power.*—Power to try, convict, and pass judgment upon persons charged with crimes and offenses under the laws of the United States is lodged in the courts alone. But courts sometimes commit mis-

takes, and sometimes special circumstances arise that make it proper to exercise clemency towards persons who are undergoing punishment for crime. Again, it may be wise to exercise clemency while the offender is on trial, or even before trial begins. So the President is authorized to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. A reprieve is a temporary suspension of punishment that has been decreed; a pardon is a full release from punishment either before or after it has been decreed. Commonly, however, a pardon comes after conviction.

413. Treaties.—A treaty is a solemn engagement or contract entered into between two or more sovereign or independent states. They relate to such subjects as commerce and trade, the rights of citizens of one country in the other, etc. Treaties also deal with the graver subjects of peace and war. The power to enter into a treaty properly belongs to the executive branch of government, as dispatch, secrecy, and unity of purpose are called for. As it might be dangerous in a republic to lodge the power exclusively in the Executive's hands, it is provided that the President, by and with the advice and consent of the Senate, shall have power to make treaties with foreign states.

414. Mode of Making a Treaty.—Commonly the steps that are taken are the following: First, the treaty is negotiated or agreed upon by the powers. The negotiation is conducted on the part of our Government by the Secretary of State, a minister residing at a foreign capital, or a minister or commissioner appointed for the purpose. The President, acting through the Department of State, directs the general course of the negotiation. Secondly, the treaty, when it has been negotiated, is wholly in the President's hands. If he disapproves

of it, he may throw it aside altogether. If he approves it, or is in doubt whether he should approve it or not, he submits it to the Senate for its advice. Thirdly, the treaty is now wholly in the Senate's hands, except that the President may at any time that he chooses withdraw it from the Senate's further consideration. The Senate may approve or disapprove the treaty as a whole, it may propose amendments, or it may refuse to act at all. If the Senate amends the treaty it is practically a new one, and both the President and the foreign power must assent to it in its new form. The fourth step is an exchange of ratifications. This is a formal act by which the powers concerned signify that all the steps required to make the treaty binding have been taken. Finally, the President publishes the treaty and by proclamation declares it to be a part of the law of the land. The Senate considers treaties in executive session, and its advice and consent in most cases is merely approval or disapproval of what the President has done. A two-thirds vote of the Senate is necessary for the ratification of a treaty.

415. Appointment of Officers. — The President nominates, and by and with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States that are provided for by law, unless the Constitution itself provides for them. Congress may, however, place the appointment of such inferior officers as it thinks proper in the President alone, in the heads of Departments, and in the courts. The President appoints his private secretary and clerks. The appointment of a somewhat larger number of officers is placed in the courts, while the appointment of a very great number is vested in the heads of the Executive

Departments. Thus, the appointment of all postmasters whose salary is less than \$1,000 is placed in the hands of the Postmaster-General. When all these exceptions have been made, a large number of appointments still remains to be made by the President and the Senate.

416. Mode of Appointment.—The first step to be taken in filling an office is for the President to make a nomination in writing to the Senate, specifying the office and naming the officer. The Senate refers the nomination to its proper committee, as of a judge to the Committee on the Judiciary, or of a foreign minister or consul to the Committee on Foreign Relations. The committee investigates the subject and reports the nomination back to the Senate, either with or without a recommendation that the nomination be confirmed. The Senate then grants or withholds its confirmation, as it is called. The Senate acts in such a case, as in the case of treaties, in executive session. If the Senate refuses to confirm, the President makes a second nomination, and so on until the place is filled. The Senate sometimes refuses to confirm a nomination if the Senators from the State where the office is, or one of them, objects to it. This is especially the case when the Senator or Senators belong to the political party that for the time has a majority of the body. This custom, which is wholly without support of law, is known as the courtesy of the Senate.

417. Ambassadors and Other Public Ministers.—Public ministers are representatives that one state or nation sends to another to look after its interests. Ambassadors are the highest rank of ministers. The other grades are envoys extraordinary or ministers plenipotentiary, ministers-resident, commissioners, and *chargés d'affaires*. The United States now have ambassadors at the capitals of England, France, Germany, and Italy, and represent-

atives of inferior grade at many other capitals. The salaries paid these representatives, who are collectively called the diplomatic service, range from \$5,000 to \$17,500. The duties and rights of ministers are defined by the Law of Nations, called also International Law.

418. Receiving Ministers.—It is the duty of the President to receive ambassadors and other public ministers sent by foreign powers to our Government. This ceremony involves the recognition of the power from which the minister comes, and also his own recognition as a man acceptable to the United States. The President can refuse to receive a minister because he is personally objectionable, and can dismiss him for the same reason.

419. Consuls.—The duties of consuls are fixed by treaties and by the municipal law of the nation appointing them. In general it may be said that they look after the commercial interests of the country at large, and assist their countrymen in obtaining commercial rights and privileges. They also perform many other duties. They are business agents and do not rank as ministers. Sometimes, however, diplomatic duties are entrusted to them. A consul-general exercises supervision over the consuls of his country within the country to which he is sent, or within some designated portion of it. The President appoints about 30 consuls-general and about 300 consuls. The highest consular salary is \$6,000. Many consuls receive their compensation in the form of fees.

420. Military and Naval Officers.—Unless otherwise provided by law, military and naval officers are appointed in the same manner as civil officers. Still the President, as commander-in-chief, has exclusive control of the commands to which they are assigned. He assigns officers to their places of duty, and removes them for what he deems sufficient reasons. Since 1866 the law

has been that no officer in the military or naval service shall, in time of peace, be dismissed from service except upon, and in pursuance of, the sentence of a court-martial, or in commutation thereof.

421. Removal from Office.—The President has the power of removal as well as of appointment. When the Senate is in session a removal is made in the following way: The President sends to the Senate a nomination, just as though the office were not already filled. If the Senate confirms this nomination, the President then commissions the officer and he enters upon the duties of his office. The former incumbent holds the office until the last of these steps has been taken. If the Senate refuses to confirm, the President must send in a second nomination or allow the incumbent to remain undisturbed. In a recess of the Senate a removal is made in a somewhat simpler way. The President now appoints directly, and at the same time gives the appointee his commission, who enters upon his office at once. When the Senate meets at its next session, the President must send to that body, for its action, the name of the appointee. If the Senate confirms the nomination, that is the end of the matter. If it refuses to confirm, the President must then make a second nomination. In either case the removal of the former incumbent is final and absolute.

422. Vacancies.—When a vacancy in any office occurs while the Senate is in session, the President makes a nomination, and matters proceed just as explained in the last paragraph. When the vacancy occurs in a recess of the Senate, the President appoints and commissions the officer, and the Senate acts on the nomination at its next session just as in the case of a removal made in the recess.

423. The Civil Service.—The persons who serve the Government in civil or non-military capacities are collectively called the civil service. They are divided into two classes called officers and employés. The two classes are not separated by any consistent rule or practice. Officers, who are much inferior in numbers to employés, are appointed and removed. Employés are employed and discharged, not appointed and removed. Laborers in the navy yards, arsenals, and the like are employés; so are many persons in continued service at custom houses and in other offices as well as many clerks. In 1893 the civil service consisted of about 200,000 persons. Of these 69,000 were postmasters and 40,000 others served in the Post-office Department. Twenty-two thousand were workmen. The others were distributed among the other Departments of the Government.

424. Civil Service Reform.—Until a short time ago it was the custom for the President and others who were clothed with the appointing power to make appointments and removals of officers for political reasons. The same practice prevailed also in respect to employés. On a change of the administration, and especially when it involved a change of party, great numbers of officers and employés would be removed or discharged to make room for others. A Democratic administration was expected to turn out the Republicans, and a Republican administration to turn out the Democrats. This was called the spoils system. Soon after the Civil War the civil service began to attract the attention of the country. Men saw that the spoils system was accompanied by great abuses and corruption. In 1882 an act was passed under which the service has been materially reformed. This act does not apply to any office where the joint action of the President and

Senate is required to make an appointment. It provides that in the Departments at Washington, and in custom-houses and post-offices where as many as fifty clerks are employed, appointments shall be made by reason of merit or fitness. Competitive examinations are held, and when a new appointment is to be made in any Department or office, as to fill a vacancy, it must be filled from the four persons standing highest on the list of those who have passed the examinations. This is called the eligible list. Every State or Territory is entitled to its fair share of the appointments, and no person can be finally appointed until he has served a probation of six months. This is called the merit system. The President, in the exercise of his discretion as the executive head of the Government, has extended this system to many classes of officers and employés that the law does not in terms include. Mention may be made of the Government Printing Office and of the Postal Railway Service.

425. The President's Message.—The President is required to give Congress information of the state of the Union from time to time, and to recommend to its consideration such measures as, in his judgment, are necessary and expedient for the good of the country. At the opening of each session of Congress, he sends to the Houses a written communication that is styled a message, conveying such information and making such recommendations. He also sends in from time to time special messages, conveying special information or recommendations as occasion requires. The communications in which the President makes nominations, transmits treaties to the Senate, and assigns his reasons for refusing to sign bills are also known as messages. The heads of the several Departments make

annual reports to the President, and these the President transmits at the same time that he sends in his annual message. Collectively they are called the Executive Documents.

426. Special Sessions of Congress.—The President, on extraordinary occasions, may call the Houses of Congress together in special session. In such cases he transmits a message explaining why he does so, and recommending such action as he thinks necessary to be taken. He may also convene either House of Congress alone, and it is the custom for the President, just before retiring from office, to issue a proclamation calling the Senate together immediately following the inauguration of his successor. This gives the new President an opportunity to nominate his Cabinet and such other officers as he thinks important to appoint at that time. No President has ever found it necessary to call the House of Representatives by itself.

CHAPTER XXXI

THE EXECUTIVE DEPARTMENTS

The American Government. Sections 511-524.

The executive business of the Government is transacted through the eight Executive Departments, that Congress has by law created. The President's office in the White House exists only for his personal convenience and is not an office of record. All the public records are kept in the Departments through which the business is transacted. The Departments are established in Government buildings in Washington. The names of the Departments, with the dates of their establishment, are as follows: State, Treasury, War, Justice, formerly called the Office of the Attorney General, and Post-Office, 1789; Navy, 1798; Interior, 1849, and Agriculture, 1889. The heads of these Departments all receive the same salary, \$8,000 a year.

427. Department of State.—At the head of this Department stands the Secretary of State, who is considered the head of the Cabinet. There are also three Assistant Secretaries of State. Under the direction of the President, the Secretary conducts the foreign and diplomatic business of the country. The originals of all treaties, laws, and foreign correspondence are in his custody. He also has in his possession the seal of the United States, and affixes it to public documents that require it, and also authenticates the President's proclamations with his signature. The business of the Department is conducted through various bureaus, such as Archives

and Statistics, the Diplomatic, and the Consular Bureaus, etc.

428. Department of the Treasury.—The Secretary of the Treasury proposes plans for the public revenues and credit, prescribes the manner of keeping the public accounts, superintends the collection of the revenue, issues warrants for the payment of moneys appropriated by Congress, and makes an annual report of the state of the finances. The several auditors of the Department examine the accounts of the different branches of the public service; the comptrollers certify the results to the Register, who has charge of the accounts and is the National book keeper. The Treasurer has the moneys of the Government in his custody, receiving and disbursing them. The Commissioner of Customs looks after the customs, the Comptroller of the Currency after the National Banks, and the Commissioner of Internal Revenue after that part of the public service. There are also directors of the Mint, of Statistics, and of Printing. The head of the Department is assisted by three Assistant Secretaries.

429. Department of War.—The Secretary of War directs the military affairs of the Government. He has charge of the army records, superintends the purchase of military supplies, directs army transportation and the distribution of stores, has the oversight of the signal service and the improvement of rivers and harbors, and looks after the supply of arms and munitions of war. The Department contains ten bureaus: The offices of the Adjutant, Quartermaster, Commissary, Paymaster, and Surgeon Generals, the Chief of Engineers, the Ordnance and Signal Office, the Bureau of Military Justice, and the Military Academy at West Point. There is also an Assistant Secretary of War.

430. Department of Justice.—The head of this Department is the Attorney-General, who is the responsible adviser of the President and the heads of the other Executive Departments on matters of law. He and his assistants look after the interests of the Government in the courts, prosecuting or defending law suits to which the United States are a party, and passing upon the titles of all lands purchased by the Government for forts or public buildings. There are in the Department a Solicitor General, four Assistant Attorney-Generals, two Solicitors of the Treasury, a Solicitor of Internal Revenue, a naval Solicitor, and an Examiner of Claims for the Department of State. The District Attorneys in the different judicial districts are also under the direction of the Attorney-General.

431. Post-Office Department.—Subject to the President, the Postmaster-General is the head of the vast postal service of the country. He has a larger number of subordinates than all the other heads of Departments together. The First Assistant Postmaster-General has charge of salaries and allowances, free delivery, money-orders, dead letters, and correspondence. The Second Assistant has charge of the transportation of mails, including contracts, inspection, railway adjustments, mail equipment, railway mail service, and foreign mails. The Third Assistant has general charge of the finances of the department, including accounts and drafts, postage stamps and stamped envelopes, registered letters and classification of mail matter, special delivery and official files and indexes. The Fourth Assistant has general charge of appointments, including bonds and commissions, appointment of post-office inspectors, depredations on the mails, and violations of the postal laws.

432. Department of the Navy.—The Secretary of the Navy stands to this Department in the same relation that the Secretary of War stands to the War Department. There is one Assistant Secretary. The several bureaus of the department are: Yards and Docks, Equipment and Recruiting, Navigation, Ordnance, Medicine and Surgery, Provisions and Clothing, Steam Engineering, Construction and Repairs. The Military Academy at Annapolis is also subject to the Secretary of the Navy.

433. Department of the Interior.—The business intrusted to the Department of the Interior is much more miscellaneous and diversified in character than that intrusted to any other Department. The Secretary has general oversight of the Patent Office, Census Office, General Land Office, and Pension Office, Indian affairs, Public Buildings, and the Bureau of Education. The most extensive of these subordinate offices is that of Pensions, which disburses \$140,000,000 annually. The Commissioner of Education collects facts and statistics in regard to education and publishes them in an annual report. There are two Assistant Secretaries of the Interior.

434. Department of Agriculture.—It is the duty of the Secretary of Agriculture to diffuse among the people useful information on the subject of agriculture, in the most general and comprehensive sense of that term. He has the supervision of all quarantine regulations for the detention and examination of cattle exported and imported that may be subject to contagious diseases. The Weather Bureau, over which "Old Probabilities" presides, is in this Department. There is one Assistant Secretary.

435. The Cabinet.—The heads of the eight Departments constitute what is called the Cabinet. This name, however, is a popular and not a legal one. The

law creates the Departments and defines the duties of their heads. The Constitution empowers the President to call for the opinions in writing of these officers on matters relating to their several duties. The heads of Departments are responsible to the country so far as their duties are defined by law; for the rest they are responsible to the President. They meet frequently with the President to discuss public business. The President defers more or less, as he pleases, to the views that they offer, as he does to the views that they expressed singly in writing or in conversation, but the Cabinet as such has no legal existence and is not responsible. No official record is made of its meetings. The Constitution makes the President alone accountable for the faithful execution of the laws. Heads of Departments hold their offices subject to the President's will; but he holds, with exceptions given, four years.¹

¹ See the Cabinet and the President's responsibility. See *The American Government*, paragraphs 522, 523, 524, and *Note*.

CHAPTER XXXII

THE JUDICIAL DEPARTMENT

The American Government. Sections 525-577.

The third of the independent branches of the Government of the United States created by the Constitution is the Judiciary. Its functions and organization will now be described.

436. Judicial Power Defined.—It is the business of the judiciary to interpret the law and apply it to the ordinary affairs of life. The judiciary does not make the law, but it declares what is law and what is not. This it does in the trial of cases, popularly called lawsuits. A case is some subject of controversy on which the judicial power can act when it has been submitted in the manner prescribed by law. It is particularly to be noted that the judicial power is strictly limited to the trial and determination of cases. Some cases involve questions of law, some questions of fact, some questions of both fact and law, and all come within the scope of the judicial power. A court is a particular organization of judicial power for the trial and determination of cases at law.

437. Vesting the Judicial Power.—The judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress sees fit to ordain and establish. The Constitution thus creates the Supreme Court, and it also provides that its head shall be the Chief Justice of the United States. At the present time the inferior courts are the District Court, the Circuit Court, the Circuit Court of Appeals, the

Court of Claims, and the Courts of the District of Columbia and the Territories.

438. Extent of the Judicial Power.—The judicial power is co-extensive with the sphere of the National Government. It embraces all cases that may arise under the Constitution and the laws of the United States, and the treaties entered into with foreign nations. It includes all cases affecting ambassadors, other public ministers, and consuls; all cases of admiralty and maritime jurisprudence; cases to which the United States are a party; cases that arise between two or more States, or between a State and foreign states; cases between citizens of different States, and cases between citizens of the same State who claim lands granted by different States, and cases between citizens of a State and foreign states, citizens, or subjects.

439. Kinds of Jurisdiction.—A court has jurisdiction of a case or suit at law when it may try it, or take some particular action with regard to it. There are several kinds of jurisdiction. A court has original jurisdiction of a case when the case may be brought or begun in that court. It has appellate jurisdiction when it may re-hear or re-examine a case that has been decided or has been begun in some inferior court. The methods by which this is done are called appeal and writ of error. An appeal brings up the whole question, both law and fact, for re-examination; a writ of error, the law only. A court has exclusive jurisdiction of a case when it is the only court that can try it or can dispose of it in some particular manner. Two or more courts have concurrent jurisdiction of a case when either one may try it, provided the case comes properly before it.

440. The District Court.—Congress has created seventy-two Judicial Districts, in each one of which a Dis-

trict Court is organized. There is at least one district in every State, and in the most populous States there are two or more. There are only sixty-six District judges, as a few of the judges preside over two districts. Each district has its own District Attorney, who is the local law officer of the Government, a Clerk who keeps the records of the court and issues legal papers under its seal, and a Marshal who is the executive officer of the court. A District court must hold at least two terms every year. It has a limited range of jurisdiction in civil cases, and especially in admiralty and maritime jurisprudence; that is, in matters relating to shipping and navigation. It also has jurisdiction of many crimes and offences committed in the district.

441. The Circuit Court.—The seventy-two districts are grouped in nine Circuits. The first circuit contains four States and four districts, the second three States and five districts, and so on. One of the justices of the Supreme Court is assigned to each circuit, and is called the Circuit Justice. There are two Circuit judges in some circuits, and three in others. The Circuit court sits from time to time in every district that the circuit contains. It may be held by the Circuit Justice, by one of the Circuit judges, or by the District judge of the district where the court is for the time sitting, or by any two of these sitting together. The district attorneys, clerks, and marshals mentioned before serve these courts also. The Circuit court has original jurisdiction in civil cases where the amount in controversy is \$2,000, not counting costs, in copyright and patent cases, and many others. It has original jurisdiction in criminal cases, and in capital cases an exclusive one. Once it was also a Court of Appeals from the District court, but its appellate jurisdiction has been abolished.

442. The Circuit Court of Appeals.—In every circuit there is also a Circuit Court of Appeals. It consists of three judges, of whom two constitute a quorum. The Circuit Justice, the Circuit judges, and the District judges of the circuit are competent to sit in this court. The last, however, can sit only for the purpose of making a quorum in the absence of the Circuit Justice or of one or both of the Circuit judges. The law designates the places where these courts shall be held. First circuit, Boston; second, New York; third, Philadelphia; fourth, Richmond, Virginia; fifth, New Orleans; sixth, Cincinnati; seventh, Chicago; eighth, St. Louis, and ninth, San Francisco. The Circuit Court of Appeals can review many decisions made by the Districts and Circuit courts. In patent, revenue, criminal, and admiralty cases its decisions are final. These courts are exclusively courts of appeals, and they were created expressly to relieve the Supreme Court of a part of its business.

443. The Court of Claims.—The Government of the United States carries on vast business operations, and, as is natural, points of dispute are constantly arising. Formerly a person having a claim against the Government that the Executive Departments could not or would not pay, had no redress but to go to Congress for relief. This was unsatisfactory both to claimants and to the Government. To meet this difficulty, the Court of Claims was created and was given jurisdiction over certain classes of claims against the Government. The methods of procedure is for the claimant to enter a suit in court, which is regularly tried and determined. If judgment is rendered against the Government, Congress appropriates money to pay it. This court consists of a Chief Justice and four Associate Justices, and sits only in Washington. Congress has also vested a limited

jurisdiction in respect to claims in the District and Circuit courts also.

444. The Federal District and the Territories.—Congress has established special courts for the District of Columbia and the Territories. The Supreme Court of the District consists of a Chief Justice and five Associate Justices, any one of whom may hold a court with power similar to that exercised by the District judges in the States. The Territorial judicial system is similar to this, but the judges are fewer in number.

445. The Supreme Court.—The Supreme Court consists of the Chief Justice of the United States and eight Associate Justices. It holds one regular term each year at Washington, beginning the second Monday of October. This court has original jurisdiction in all cases relating to ambassadors and other public ministers and consuls, and those to which a State is a party. It has appellate jurisdiction, both as to law and fact, in all cases originating in the inferior courts, save such as Congress by law shall except. Nearly all the cases that the Supreme Court passes upon are appellate cases. Appeals may be made to it, and writs of error lie to it, from the District and Circuit courts, from the Court of Appeals, and from the Supreme Courts of the Federal District and the Territories.

446. Appointment of Judges.—The National judges are appointed by the President by and with the advice and consent of the Senate. The appointments are for good behavior, by which expression official behavior is meant. Nothing is more necessary to a judicial system than the independence of the judges. If they were elected by the popular vote, they might court the popular favor to secure an election. If they served for fixed periods, they might court the Senate and President to

secure re-appointment. The courts of the Federal District and of the Territories do not come within the Constitutional provisions. However, Congress has made the tenure of the first good behavior, and of the second a term of four years.

447. Pay of the Judges.—The salary of a judge can not be diminished while he continues in office, but it may be increased. If Congress could reduce the judge's salary after he had entered upon his term, it might control his action and make him dependent upon its will. The salary of the Chief Justice is \$10,500; of the Associate Justices, \$10,000; of the Circuit Judges, \$6,000; and of District Judges, \$5,000. Any judge who has held his commission ten years and has attained to the age of seventy, may resign his office and continue to draw his salary during the remainder of his life.

448. Concurrent Jurisdiction of National and State Courts.—The Constitution gives the Supreme Court an original jurisdiction in cases affecting public ministers and consuls, and cases to which a State may be a party. Congress has gone further and declared the jurisdiction of the National courts in certain cases to be an exclusive one. Patent and admiralty cases, for example, are of this class. Outside of this exclusive jurisdiction, Congress has given the State courts a civil jurisdiction concurrent with that of the National courts. Still more, some criminal offenses under the National laws may be prosecuted in the State courts, as those arising under the postal laws.

449. Appeals from State Courts.—The Constitution, laws, and treaties of the United States are the supreme law of the land. If the constitution or the laws of a State conflict in any way with this supreme law, such constitution or laws, so far as the confliction extends,

are null and void. Moreover, the power to decide what is, and what is not, a confliction with the National authority rests with the National judiciary. Hence, any case arising in the courts of a State that involves the National authority may be appealed to the National courts. Such cases are said to involve Federal questions. To this extent, therefore, the courts of the United States are the final and authoritative interpreters of the constitutions and laws of the States.

450. Rules Regulating Trials.—A jury system like that found in the States is a part of the National judiciary. All crimes, save in cases of impeachment, must be tried by an impartial jury of the State and judicial district where they have been committed. Crimes committed in the Federal District or in a Territory must be tried in the District or Territory. Crimes committed on the sea are tried in the district in which the accused is arrested, or into which he is first brought when the ship returns to the United States. No person can be put on trial for a capital or infamous crime until he has first been indicted by a grand jury; in such case the trial must be a speedy and public one, and the accused must be informed of the accusation made against him. He shall have the benefit of the compulsory power of the court to compel the attendance of witnesses, and shall also have the assistance of a lawyer for his defense. Excessive bail can not be required, or excessive fines be imposed, or cruel or unnatural punishments be inflicted. No person who has once been tried for an offense and found innocent, can be put on trial for that offense the second time. In a criminal case no man can be compelled to testify against himself, nor can any person be deprived of life, liberty, or property until he has been adjudged guilty according to the common course of the

law. In any civil suit at common law where the amount in controversy is more than twenty dollars, the right of trial by jury is also preserved. Rules like these will be found in the jurisprudence of the several States. These rules, however, relate exclusively to the National tribunals. The Fourteenth Amendment declares that no State shall deprive any person of life, liberty, or property without due process of law.

451. Military Courts.—Cases arising in the military and naval service are tried in special courts called courts-martial. This is true of the militia also when they are employed in the public service in time of war or public danger. In all such cases as these the rule in regard to an indictment by a grand jury has no application.

452. Treason.—Treason against the United States is either making war against them, or siding with their enemies, rendering them aid and comfort. No person can be convicted of this crime, which is considered the greatest of all crimes, except on the testimony of two witnesses to the same offense, or on his own confession of guilt in open court. Congress has enacted two modes of punishment for treason at the discretion of the judge trying the case. The traitor shall suffer death; or he shall be imprisoned at hard labor for not less than five years, be fined not less than \$10,000, and be pronounced incapable of holding any office under the United States.

CHAPTER XXXIII

NEW STATES AND THE TERRITORIAL SYSTEM

The American Government. Sections 584-597.

The Territorial System of the United States has played a very important part in their history. It is proposed in this chapter to show how it originated, and to describe its principal features.

453. The Original Public Domain.—At the time of the Revolution seven of the thirteen States claimed the wild lands lying west of the Alleghany Mountains and extending to the Mississippi River and the Northern Lakes. These were then National boundaries. In time these States yielded their claims. When the Constitution was framed in 1787, the country northwest of the Ohio River had already come into possession of the Old Congress. The Southern cessions were made later. In general, the cessions to the Nation included both soil and jurisdiction—the ownership of the land and the right to govern the territory. The Northwestern cessions constituted the first Public Domain of the United States; that is, a territory belonging to the Nation in common. The Constitution gave Congress the power to dispose of the National territory, and to make all needful rules and regulations for its government. Before this, however, Congress had established a government over the existing domain, which was styled the Northwest Territory.¹

454. Annexations.—Seven annexations of territory have been made to the United States: Louisiana purchase,

¹ See Chapters V and VI.

1803; Florida, 1819; Texas 1845; Oregon, 1846; the two Mexican annexations, 1848 and 1853, and Alaska, 1867. These annexations, with a single exception, were additions to the public domain and became at once subject to the control of Congress. This exception was Texas, which had been an independent power and was admitted to the Union as a State at once without passing through the Territorial probation. Subsequently Texas sold that part of her dominion which now forms the eastern part of the Territory of New Mexico to the United States.

455. Provision for New States.—The claimant States made their cessions of Western territory on the condition that, as rapidly as it became ready, such territory should be divided into new States to be admitted to the Union on an equality with the old ones. So a provision was inserted in the Constitution that authorized Congress to admit new States to the Union. But this was not all; some controversies had already arisen concerning the formation of new States out of old ones. So it was provided that no new State should be formed within the jurisdiction of any State nor should any new State be formed by uniting two or more States, without the consent of the Legislatures concerned as well as of Congress.

456. Territories of the United States.—In a broad sense the whole dominion of the United States is their territory, States and Territories alike. But in common usage the term territory is limited to so much of the whole dominion as has not been formed into States. Still further, as thus limited the word is employed in two senses. An organized Territory is a part of the dominion having prescribed boundaries and a fully developed Territorial Government. Arizona, New Mexico, and Oklahoma are the only Territories of this class. An unorganized

Territory either has no government at all, or has a very rudimentary one carried on by officers sent from Washington. Thus civil government is administered in Alaska, which is an unorganized Territory, by a Governor and Commissioners appointed by the President and Senate.

457. Government of an Organized Territory.—Such a government is set up by Congress. The Governor, Secretary, and Territorial Judges are appointed by the President for four years, and are paid from the National Treasury. The Legislature consists of a house of representatives and a council, the members of which are elected by the qualified voters of the territory. The Legislature legislates on subjects of local concern, subject to the Constitution and laws of the United States. For example, it may establish counties and townships and local self-government for the people. It may also establish a Territorial system of schools. The Governor exercises powers similar to those exercised by the Governor of a State, while the Secretary performs duties similar to those performed by a State Secretary of State. There are also a District Attorney and a Marshal appointed by the President. A Territory can not be represented in Congress or participate in the election of President and Vice-President. Still an organized Territory is permitted to send a delegate elected by the people to the House of Representatives, who may speak but not vote. It will be seen that the status of a Territory is in all respects inferior to that of a State. A Territory is an inchoate State.

458. Admission of New States.—This subject has been committed wholly to the discretion of Congress. Congress makes the boundaries of the State, fixes the conditions of admission, gives the State its name and

determines the time of admission. Congress settles some of the details in the act creating the Territory, and still others in a law providing for its admission called an Enabling Act. The principal steps to be taken are the following: First, the people of the Territory elect the members of a convention to frame a State constitution. Secondly, the convention thus elected performs the duty duly committed to it. Thirdly, the constitution is submitted to the people for their approval. Fourthly, Representatives and Senators are elected to represent the new State in Congress. Fifthly, comes the formal act of admission, which is sometimes performed by the President, who issues a proclamation to that effect in compliance with a law previously passed, and sometimes is performed by Congress passing an act called an act of admission.

459. States Admitted.—Thirty-two new States have been admitted to the Union. Vermont, Maine, West Virginia, Kentucky, and Tennessee were formed from old States and were never Territories. The facts in regard to Texas have been stated already. The other States, twenty-six in number, have been formed from the public domain; and, save California alone, have passed through the Territorial probation.

460. Indian Territory.—Some sixty years ago this Territory was set apart and dedicated by Congress as a home for so-called civilized tribes of Indians. Many tribes and portions of tribes were removed there from east of the Mississippi River. The Indians keep up their tribal organization of government, but they are subject to the general oversight of Congress. There is a United States court in the Territory, which exercises jurisdiction over offenses committed against the laws of Congress so far as they are applicable.

461. The Public Lands.—Beginning in Southeastern Ohio, in 1786, the Government has caused the public lands to be surveyed according to a practically uniform system. They are first cut up into townships six miles square, and then these are subdivided into sections of 640 acres, which again are divided into lots of 160, 80, and 40 acres. The sections are now numbered, back and forth, in the following manner:

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Such a township as this is called a Congressional township. As a rule, the States have based their divisions of counties and townships on the Government surveys, and it is this fact that gives the maps of the Western States such a checker-board appearance. In general Congress has followed a very liberal policy in respect to the public lands, selling them at low prices, giving them away as bounties to soldiers and to settlers under the homestead law, and granting them to States and railroads and other corporations to stimulate education and public improvements.

462. School Lands.—Beginning with Ohio, admitted to the Union in 1803, and continuing to Wisconsin, ad-

mitted in 1848, Congress gave section No. 16 in every Congressional township to the people of the township for the use of common schools. Beginning with California, in 1850, and continuing to the present, it has given sections 16 and 36 in every township for that purpose. Congress has also given every public-land State, or State formed out of the domain, two townships of land for the support of a State university, and some of them more than two. It has also given lands for agricultural colleges and normal schools, and for other educational purposes.

463. New States.—The following table contains the names of the new States, and the dates of their admission to the Union:

Vermont, March 4, 1791.	Wisconsin, May 29, 1848.
Kentucky, June 1, 1792.	California, September 9, 1850.
Tennessee, June 1, 1796.	Minnesota, May 11, 1858.
Ohio, February 19, 1803.	Oregon, February 14, 1859.
Louisiana, April 8, 1812.	Kansas, January 29, 1861.
Indiana, December 11, 1816.	West Virginia, June 19, 1863.
Mississippi, December 10, 1817.	Nevada, October 31, 1864.
Illinois, December 3, 1818.	Nebraska, March 1, 1867.
Alabama, December 14, 1819.	Colorado, August 1, 1876.
Maine, March 15, 1820.	North Dakota, Nov. 2, 1889.
Missouri, August 10, 1821.	South Dakota, Nov. 2, 1889.
Arkansas, June 15, 1836.	Montana, November 8, 1889.
Michigan, January 26, 1837.	Washington, Nov. 11, 1889.
Florida, March 3, 1845.	Idaho, July 3, 1890.
Texas, December 29, 1845.	Wyoming, July 10, 1891.
Iowa, December 28, 1846.	Utah, January 4, 1896.

CHAPTER XXXIV

RELATIONS OF THE STATES AND THE UNION

The American Government. Sections 419-445; 578-583; 598-603; 608-620; 623-631; 644-654; 763-772.

Part III of this work describes the government of a single State. The preceding chapters of this Third Part describe the Government of the Union in its general features. It is very obvious that either one of these governments, by itself, would be very imperfect. It is equally obvious that they supplement each other. Each one is essential to the other and to society, and neither one is more essential than the other. The two together make up one system of government. The governments of the States are part of the Government of the Union, and the Government of the Union is a part of the governments of the States. The citizen is subject to two jurisdictions, one State and one National. Both of these jurisdictions have been created by the American people, and each one is exclusive and independent within its sphere. In other words, the United States are a federal state, and their Government is a federal government. Moreover, experience shows that such governments are complicated and delicate, and that they will not work well unless the two parts, local and general, are well adapted each to each like the parts of a machine.

464. The State Sphere.—The sphere of the State is well marked off. Matters of local and State concern are committed to its exclusive authority. Within its sphere,

the State is perfectly free to do what it pleases, taking good care not to infringe upon the sphere of the Union. It is the great business of the State government to preserve the peace and good order of society within its borders. It defines civil and political rights; defines and punishes crime; protects the rights of property, of person, and of life; regulates marriage and divorce; provides schools and education for the people, and does a hundred other things that it deems necessary to promote the physical, intellectual, and moral well-being of the people.

465. The National Sphere.—This is equally well defined. Matters of general, common, or National interest are committed to the Union. Here are the powers to levy taxes and borrow money for National purposes; to regulate foreign commerce; to conduct war; to carry on the post-office; to manage foreign relations, and to exercise the many other powers that are delegated by the National Constitution. It will be seen that these are matters in which the whole American people are interested. Within its sphere, the Nation is just as free and unlimited as the State is within the State's sphere.

466. The State and the Union.—Neither one of these jurisdictions is, strictly speaking, limited to matters purely local or purely national. The State does more than merely to look after local interests. The Union does more than merely to see to National affairs. Either authority does some things that, at first thought, might seem to belong exclusively to the other. In this way, great strength is imparted to the whole system, and it is made to do its work more thoroughly. This a series of paragraphs will show.

467. National Functions of the States.—The State participates directly in carrying on the Government of

the Union. It defines the qualifications of electors, establishes Congressional districts, conducts the elections of Representatives, elects members of the United States Senate, and appoints Presidential Electors. All these things are purely voluntary. The States cannot be compelled to do them, but if they should refuse or neglect to do them the whole National system would fall into ruins. But, more than this, the Union employs the State militia, and imposes duties upon the governors and judges of the States.

468. Prohibitions Laid on States.—The successful working of the National system makes it necessary that certain prohibitions shall be laid on the States. No State can enter into any treaty, alliance, or federation; coin money, issue paper money, make anything but gold and silver a tender in payment of debts, pass any law interfering with contracts, or grant any title of nobility. No State, without the consent of Congress, can levy duties or impostson imports and exports, beyond what is necessary to pay the cost of its inspection service. No State can, without the consent of Congress, lay any tonnage tax on ships, keep troops or ships of war in time of peace, or enter into any compact or agreement with another State or a foreign power. No State can engage in war, unless it is actually invaded or in immediate danger of invasion.

469. Duties of State to State.—If the National System is to work smoothly, it is obvious that a good understanding among the States is necessary. The Constitution accordingly lays various commands upon the States in respect to their relations one to another. The acts, records, and judicial processes of any State are respected by every other State, so far as they can have any application. For example, a marriage contracted or a

divorce granted in one State is a marriage or a divorce in every other State. Citizens of one State passing into another State are entitled to all the rights and privileges that the citizens of such State enjoy. If a person who is charged with any crime in one State flees from justice and is found in another State, it is the duty of the Governor of the State to which he has fled to surrender him on the demand of the Governor of the State from which he has fled, that he may be brought to trial and, if guilty, to punishment.

470. Privileges and Immunities of Citizens.—Section one of Amendment XIV. declares all persons born and naturalized in the United States and subject to their jurisdiction, to be citizens of the United States and of the State wherein they reside. It contains also the following declarations: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Union owes several important duties to the State.

471. Republican Form of Government.—The Union guarantees to every State a republican form of government. If a non-republican government should be established in any State by revolution or otherwise, it would be the duty of the Union to interfere and see that republican government be re-established. Power to decide in such cases what a republican form of government is, belongs to Congress.

472. Invasion and Domestic Violence.—The Union must also protect the States against invasion, and in emergencies against domestic violence. These duties are

the more necessary because the Constitution denies to the States the right to keep troops and ships of war in time of peace. If any State is invaded it is the duty of the President to call out the National forces to repel the invasion. In the first instance it is the duty of the State authority to suppress domestic violence within its borders, but if such authority in any case thinks the assistance of the United States to be necessary or advisable, it has the right to call for such assistance. The Legislature, if it be in session, and otherwise the Governor, makes the call. This call is addressed to the President, who takes such steps as he thinks necessary to accomplish the object.

473. The National Authority and the Public Peace.—There are, however, certain emergencies in which the President can act directly to suppress domestic violence. When such violence interferes with the operations of the National Government, he need not wait for the State Legislature or Governor to call for assistance, but is in duty bound to act at once to protect the operations of the Government and so to restore the public peace. Thus, when the United States mails and inter-State commerce were interrupted in Chicago in 1894, President Cleveland ordered the National forces to protect the mails and the railroads.

474. Supremacy of the Union.—The Constitution, laws, and treaties of the United States are the supreme law of the land. They supersede State constitutions and laws whenever these constitutions and laws encroach upon the supreme law. To secure this end, the judges of the State courts, in interpreting and declaring the law, must side with the United States, rather than with the State, in all cases of conflict. To secure this supremacy the more completely, Senators and Representatives

of the United States, members of the State Legislatures and all executive and judicial officers, both of the United States and of the States, must take an oath or affirmation to support the Constitution of the United States. But no religious faith, opinion, or rite can be made a qualification for holding any office of public trust under the United States.

There are also many prohibitions laid upon the National authority. Several of these have been dealt with already in other places; others will be mentioned in this place.

475. Writ of Habeas Corpus.—In countries where this writ is recognized, a sheriff or other officer, or even a private individual, who has a person in his custody whom he is depriving of his liberty, can be made to show cause why he holds him. The person who is held as a prisoner, or other person in his interest, appeals to a court of competent jurisdiction for a writ of *habeas corpus*, which commands the officer or other person to bring his prisoner into court. If he can show no sufficient cause for holding him, the prisoner is set at liberty. This writ is one of the great bulwarks of personal liberty, and the Constitution provides that the privilege of the writ shall not be suspended unless in time of rebellion or invasion when the public safety requires it.

476. Bills of Attainder and Ex Post Facto Laws.—A bill of attainder is a legislative act that inflicts punishment of some kind upon a person without a judicial trial. An *ex post facto* law is a law that places some punishment upon an act that was not placed upon it when the act was done. Both the State Legislatures and Congress are forbidden to pass any bill of attainder or *ex post facto* law.

A statement of several restrictions that are imposed upon the States or the Union, or both States and Union, may fitly close this work.

477. Titles of Nobility.—These would plainly be out of character and be corrupting in tendency in a republican country. Republicanism assumes the equality of citizens. So it is provided that neither the United States nor any State shall grant any title of nobility. Furthermore, no officer of the United States can, without the consent of Congress, accept any present, office, or title from any king, prince, or foreign state.

478. No National Church.—Congress can pass no law in relation to a state church or establishment of religion, or prohibit the free exercise of religion. All churches and religions are, so far as the National authority is concerned, put on the same level. The separation of Church and State is a fundamental principle of American polity.

479. Freedom of Speech and the Right of Petition.—Congress can pass no law abridging the freedom of speech or of the press, or denying or limiting the right of citizens peaceably to assemble and to petition the Government for a redress of grievances. This provision, however, is no defense of license of speech or printing, such as slander or libel, or of public tumult and disorder.

480. Soldiers in Private Houses.—Tyrannical rulers have often accomplished their purpose of oppression by quartering soldiers in the houses of citizens, to overawe and intimidate them. In the United States soldiers can not be quartered in private houses without the consent of the occupants in time of peace, and not in time of war save in a manner that is prescribed by law.

481. The Militia.—Tyrannical governments have often found it necessary, in order to accomplish their purpose, to suppress the citizen soldiery, or to deny the people the right to keep and to bear arms. Our Constitution provides that, since a well regulated militia is necessary to the security of every state, the right of the people to keep and bear arms shall not be infringed.

482. Searches and Seizures.—Oppressive rulers have often, or generally, held themselves at perfect liberty to search the papers and persons of citizens or subjects, in order to find evidence for criminating them or for establishing their own tyranny the more thoroughly. Our Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. Warrants for the purpose of making such seizures shall not be issued by magistrates unless there is probable cause for issuing them, which must be sworn to by the complainant; and even then they must particularly describe the place to be searched and the persons and things to be seized.

TOPICS AND QUESTIONS.

I. TERRITORIAL AND STATE HISTORY.

1. Trace the relation between the physical conditions of the thirteen colonies and their development.
2. Show the relation between the natural resources of the different sections of the United States and their distinctive and peculiar development.
3. What was the constitutional question involved in the Louisiana Purchase?
4. Contrast the New Northwest with the Old Northwest as to geographical extent and natural resources. Compare the industrial and political development of these sections.
5. What part of the New Northwest was acquired by purchase, and what part by right of exploration?
6. What has determined the character of industry in the various parts of the New Northwest?
7. Where are glaciers found at the present day? Are the results of their action now similar to the effects found in Dakota?
8. Locate any moraines that have been found in your immediate vicinity.
9. Draw a map of the State, locating its mineral region, its artesian basin, its wheat fields, and grazing districts.
10. Name the treaties that gave the white man rights to land in South Dakota.
11. Name the difficulties and hindrances encountered by the early settlers.

12. Consider the value of the railroads in the settlement of the Territory. What would be the effect on land values if all railroads were withdrawn from the State?

13. Name the initial points of settlement in the eastern and western parts of the State.

14. What is the political principle involved in squatter government?

15. Contrast the early settlers of Dakota with the settlers of the thirteen colonies.

16. Contrast the conditions of settlement in Dakota and in the thirteen colonies.

17. Contrast Territorial and State government.

18. Compare the growth of population and industry in the three periods of Territorial life.

19. Contrast the educational resources of the West and East.

20. What peculiar question of political rights arose in connection with the movement for admission?

21. What is an enabling act?

22. What are the conditions of the compact made between South Dakota and the United States?

23. What conflicting theories exist in regard to constitution-making? Which theory is exemplified by our state constitution?

II. ORIGIN AND DEVELOPMENT OF CIVIL INSTITUTIONS.

1. Define the terms society, state, government, and constitution.

2. What are rights? What are your rights as a pupil in school?

3. Mention instances of political or state co-operation in your own school district, township, town, city, etc.

4. Why is the right of taxation necessary? How is it abused?

5. Distinguish between the state and the government. Which has sovereignty?

6. State the arguments for and against the initiative and the referendum. Illustrate each.

7. Distinguish between centralized and decentralized governments. Give examples of each.

8. In what ways does the individual feel the authority of the National Government?

9. Consider the effects upon society of the failure to enforce law.

10. In what is a State independent of the National Government?

11. What are the main features of early German institutions?

12. Compare and contrast the markmoot and the modern town-meeting.

13. Distinguish between the Anglo-Saxon township, manor, hundred, and shire.

14. Contrast the English shire of the seventeenth century with the county of Dakota.

15. What were the main principles of government held by the early English colonists?

16. Contrast the motives of the early New England settlers with those of the early settlers in Dakota.

17. Contrast the New England town with the Dakota township.

18. What evidence is there that the social and political sentiment of early New England survives in the New Northwest?

19. Contrast the townships of New England, New York, Pennsylvania, and South Dakota.

20. Contrast the physical conditions of the colonies

of the North and the South, and likewise their social and political institutions.

21. What evidence is there that the political institutions and social sentiments of the early colonies have moved westward on parallels of latitude?

III. LOCAL INSTITUTIONS OF THE STATE.

1. *The Township.*

1. What are the purposes of the town-meeting?

2. Distinguish between the congressional and the civil township.

3. What powers of government are exercised by the supervisors of a township?

4. What is an election precinct? How many in your county?

5. Has your county the township or the district system of school organization?

6. Has the school district any relation to the township?

7. What differences in management do you find between the rural school district and the city school district?

8. Why should we have a compulsory education law?

9. Is this law a violation of the principle of local control of local affairs?

10. Is it of any consequence to one township or city how another township or city manages its educational affairs?

11. Is it of any consequence to one State how another conducts its schools?

12. When and by whom can a pupil of the public schools be arrested under the provisions of the compulsory school law?

13. What are the duties of the overseers of highways?

14. Has our system of road management been a satisfactory one?

15. What objections are there to it?

16. Would it be a violation of the principle of local control of local affairs to place the management of the roads in the hands of the State?

17. Why should not the affairs of the township be placed in the hands of the supervisors, as those of the county are in the hands of the commissioners?

2. *The City and Town.*

1. Distinguish between a city, town, and village.

2. What is the right of eminent domain? When can it be exercised by the city council?

3. What is the essential difference in government between a town and a city?

4. Is the county seat of your county a town or a city?

5. How are bonds issued by a city?

6. What is an ordinance? State the various steps in its passage.

7. Why should the functions of government be more clearly defined, and the departments be more distinct in city than in town government?

8. What has been the weak point in modern city government?

9. What is the "spoils system" in politics? What evils have resulted from it?

10. Why should not the township have a single chief executive as well as the city?

11. Why should not the city vote on all appropriations as well as the township?

12. Why should a township be restricted in the pur-

poses for which it may appropriate money, while the city is given large freedom in this respect?

13. What things should each local community be allowed to manage for itself?

14. Has the increase in rapidity of communication and travel modified the principle of local control of local affairs?

15. Have the people of the surrounding townships any interest in the affairs of the city?

16. Have the people of the city any interest in the management of the affairs of the surrounding townships?

3. *The County.*

1. What functions of government do the county commissioners perform?

2. What is a board of equalization, and what functions does it perform?

3. What are mortgages, and where are they recorded?

4. Why should mortgages and other such papers be put on the public records?

5. What is a bill of sale? Why should it be recorded?

6. Distinguish between an indictment and a presentment.

7. Distinguish between a summons, a warrant, a subpoena, and a writ.

8. Why should the affairs of the county be left in the hands of a board, while those of the township are committed to the town-meeting?

9. Why should not the county be allowed to vote on all appropriations of money?

10. Would the referendum enable them to do this?

11. Why should not the county have a single executive head?

12. Is the referendum anything more than the exten-

sion of the principle of the township government to the county and State?

13. What relations exist between the county, township, and school district?

14. What are the different forms that county government has assumed?

IV. THE STATE.

1. *Legislative Department.*

1. Why make it one of the qualifications of senators and representatives that they must hold no office under the State or the United States?

2. Why should senators and representatives be privileged from arrest?

3. Why should the House elect its speaker while the presiding officer of the Senate is elected at the general election?

4. What can be said in favor of the committee system?

5. What are the initiative and referendum now (1898) under discussion?

6. Describe the formation of the committee of the whole and explain its purpose?

7. Our State constitution provides that appropriation bills may originate in either house. Why this variation from the usage of Congress?

8. Why is special or private legislation forbidden in certain cases?

9. Why should each house be made the judge of the elections and qualifications of its own members?

10. What are the qualifications of an elector in this State?

11. What is a bill of rights? Where did it originate?

12. Why should one be placed in the constitution?

13. Is there one in the constitution of the United States?

14. Point out the applications of the theory of "checks and balances" in the State government.

15. Why should there be two houses in the legislature?

16. Would legislation be equally good with only one?

17. Why should the governor be given the power to veto legislation?

18. Why should he not have an absolute veto?

19. Has the modern party system affected the working of our government?

20. Has its influence been good or bad?

21. Can you suggest any changes in government to counteract the influence of parties?

22. Why should not the qualifications of representatives and senators be made much higher than those of an elector, so as to secure the best talent of the community?

2. *Executive Department.*

1. Why should part of the State officers be appointed?

2. Would it be an improvement to have them all elected?

3. Does the fact of appointment make them more or less a factor in politics? How is it in the National Government?

4. How would the theory of our government be changed if the governor were to appoint the county officers?

5. Why should not the governor be allowed to appoint all the other executive and administrative officers of the State?

6. Would this not give the governor more power to secure good government?

7. What dangers would there be in this plan?
8. How many boards of equalization are there in the State?
9. Why should there be a board of pardon?
10. When can the governor call out the militia?
11. Under what circumstances can the President of the United States send troops into the State?
12. What is a corporation?
13. How would you proceed to form a corporation?
14. Of what advantage is a public examiner?
15. What accounts does he examine?
16. The constitution provides that no person shall be eligible to certain offices for more than two successive terms. Why?
17. Distinguish between the duties of the secretary of State for a State and for the Nation.
18. Why should not the governor be given the pardoning power without the intervention of a board of pardons?

3. Judicial Department.

1. When can the writ of habeas corpus be suspended?
2. What is meant by the freedom of the courts?
3. Why should the State judges be elected, while the United States judges are appointed?
4. What are some of the provisions of our government to secure personal liberty?
5. What questions are decided respectively by the judge and jury?
6. Why should questions of fact not be tried by the supreme court?
7. When would you use a writ of habeas corpus? mandamus? injunction?
8. When is a search warrant issued? Under what circumstances?

9. Why should not a person be obliged to give evidence against himself?

10. Why is the freedom of speech and of the press an important one?

11. What is libel? Slander?

12. Is there any protection to-day against either of these?

13. Can a person be imprisoned for debt in this State?

14. What have been some of the difficulties of government in America?

15. In what governmental units have the most evils existed?

16. In which department of the State have these evils existed most?

17. Can you suggest any remedy?

18. Can the courts correct any of those evils?

19. Should the people of a State be allowed to manage their own affairs in their own way?

20. Have the people of California no interest in good government in South Dakota?

21. Are the people of South Dakota affected by bad government in California?

22. Is the world, practically, as large as when the Battle of Bunker Hill was fought?

23. Do men try to govern it, practically, on the same principles as then?

24. Are they likely to succeed?

25. Can free government exist without the right to vote?

26. Is democracy the best form of government?

27. Has any other ever succeeded in the long run?

APPENDIX

BRAINTREE RECORDS.

The following extracts taken from the records of the town of Braintree, Mass., will perhaps be of interest as showing the nature of early township government in that colony. So far as the authors know, these records have not been previously printed:

9 mo. 1641. Against any inhabitant selling ye land without offering it first to the selectmen to a stranger; — it is ordered that noe inhabitant shall sell or dispose of any house or land to any that is not received as inhabitant into the town without it being first offered unto the men that are appointed to dispce of the town's affairs; and in case it is not bought by them within twenty days after the first offer that they shall have liberty to dispose of it only to such as the town shall approve on, and therefore it is agreed that every acre of land or house so disposed on without the townsmen's consent shall pay the whole sum of nineteen shillings and seven pence.

4th of the second month 1641. Moreover it is further ordered that noe man that is not reccived an inhabitant into the town shall have liberty to build any house or cottage within the libertys of the towne without the consent of those that are chosen to dispose of the town's affairs.

29th 10th month 1645. Town March to the Elders. At a town meeting there being present, Wilde, James Penniman, Martin Sanders, Thomas Nickniss, Samuel Bass, Peter Brackitt, it is ordered that the fourteen acres of town march shall be improved to the elder's use Mr. Thompson and Mr. Flint (to) such time as the townsmen shall (see fit) otherwise to dispose of it.

29th 11 mo. 1650. A petition of David Mattalls to the selectmen of Braintree. To our loving brethren and neighbors, the townsmen of Braintree, these are to certifie you that all we whose names are underwritten doe stand to a joint and equal purchase of the common, one to pay as much as another and to have every man alike equal part or share of it not that we intend hereby that any man not having cat-

tell of his own answerable to his share of the common shall either directly or indirectly take in from any other town or townes any manner of cattel to summer them upon the common thereby or wronge the towne (we profess against it) provided this hinder not any one of us the inhabitants aforsayd to hire oxen or cows for his own proper use or servis. Steven Kinsley in the name of the rest.

10th 9th month 1646. A grant of taking timber off of the common for a man's own use. But not to sell out of the town. At a meeting being present Samuel Bass, James Penniman, Gregory Belshor, Henry Adams, Samuel Adams, it is ordered that every man that is an inhabitant of the towne shall have liberty to take any timber off the common for any use in the towne (provided) so they make not sale of it out of the towne and in case any shall make sale of it out of the towne either in boards or bolts or any other ways whole or sawne they shall pay for every two tunne of timber five shillings a tunne to the towne.

6th 3d Mo. 1653. An order against strangers coming into towne without consent of the Selectmen. There being met together Martin Sanders, Samuel Bass, James Penniman, Richard Brachit, William Allio. Upon consideration of great ill conveniences that may come to the town of Braintree by persons coming in to inhabite amongst us; It is therefore ordered that noe person or persons shall come in to inhabite amongst us without the consent of the Selectmen upon the penalty of nineteen shillings fine for every three days they shall stay amongst us and it is further ordered that no inhabitant shall receive any person or inmate into their house above three days without the townmen's consent upon the forfeiture of nineteen shillings and eleven pence.

And it is funder ordered that noe man shall build house or cottage within the township of Braintree without the Townesmen consent upon the forfeiture of such penalty as the Selectmen shall see cause to put and upon them.*

MARTIN SANDERS,
RICHARD BRACHIT.
WILLIAM ALLIO.

29th 8th mo. 1656. A vote passed at a publike meeting about the common.

* It is worth while to notice that just such regulations as this are still in force in parts of Germany. It would be interesting to know whether they arose independently in the two countries or have a common origin in the German mark.

The inhabitants of Braintree having publike notis given six weeks before the vote passed to give a publike meeting for the ordering and disposing of the common for future times. At which meeting the inhabitants that were met voted the Common for to lye as a free Common unto all inhabitants of the towne that are legally taken in by the Selectmen and such to have like privileges as the grand purchasers. But when it was voted at the said meeting there was but four men that dissented or voted against it which were by name as is here underwritten

Robert Stevens, John Harbour, Sr., William Vega, Samuel Thompson.

March ——. A vote passed by the towne at a generall meeting in year 67 the grant. The Hon'l Generall Courte in way of answer to a petition presented by the deputy of our Towne granted six thousand acres of land to the towne of Braintree; In case the said grant be layed out and confirmed by the court, it is the vote of the towne that every accepted inhabitant wch is an householder in the towne of Braintree shall have an equall interest in the land granted and that every such an inhabitant and householder shall have his equall portion of charge in the seeking of it and laying of it out and all charges as shall follow and every man shall bring in his twelve in money at the present time at or befor the 8th day of this instant March.

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THE FIRST SCHOOL HOUSE IN DAKOTA.

The statement that the first school house erected in Dakota was built at Vermillion in 1864 has been generally accepted until recently (1901). Mr. Doane Robinson, Secretary of the State Historical Society, has discovered evidence that the first school house in the Territory was located at Bon Homme. The evidence in support of this is from several people who were in Bon Homme from the time of its first settlement in 1858. Mrs. W. T. Williams, nee Rounds, of Tyndall, who was a resident of Bon Homme from the time of its first settlement for many years, was a pupil of the first school in Bon Homme. Mrs. Williams gives very positive evidence relative to the first and second schools taught in Bon Homme, and her testimony is supported by that of several others.

In a letter to the writer Mrs. Williams states the case as follows:

"Our family, in company with a number of others, arrived in Bon Homme about Nov. 12th, 1859. Shortly after we were settled, Mr. D. P. Bradford came and built a house for his family, who were then living in Sioux City. His family came to Bon Homme on the first boat in the spring of 1860. The river opened very early that spring, some time in February, and it was probably the latter part of April or the first of May when they arrived. The first school house was built after they came, and as it was a primitive affair it did not take long to build it. Within two weeks of the arrival of the Bradfords, Miss Emma Bradford, second daughter of D. P. Bradford, then about sixteen years of age, was installed as teacher. She taught a three months' term of school. There were ten pupils as follows: John and Le Anna Bradford; Melissa, John, and Ira Brown; Ann, Mary, and George McDaniels; George and Delia Rounds. Miss Emma Bradford returned to Sioux City in the fall of 1860 to con-

tinue her studies in the schools of that place. In 1861 there was a good deal of building and improvement in the town, but there was no school, from the lack of a teacher, I suppose. In 1862, at the time of the Indian trouble, we had what we considered a fine new school house,* built by Mr. Shober at his own expense. It was made of hewn logs, had a rough cotton-wood floor, cotton-wood shingles on the roof, three windows of two sash each with 8x10 glass, and a ceiling overhead of thin, cotton-wood boards which warped until they looked as though they had been run through a fluting machine. But in that building we never had a school. The people all went to Yankton that year and fortified themselves against the Indians. When the scare was over, very few of them ever returned, some going back to their homes in the East, and a few settling in Iowa. We returned to Bon Homme, and in the spring of 1864 my mother bought from Mr. Shober this new school house. Sometime in June, 1864, there arrived in Bon Homme about a dozen families of what was called the "Syracuse Colony," under the direction of Jas. S. Foster. Mrs. Foster opened a school shortly after their arrival in Mr. Bradford's house, which had been used during the winters of 1862-3 as soldiers' barracks, there having been a squad of soldiers kept in Bon Homme for the protection of the settlers, and as a relay in carrying the dispatches to the forts above us on the river. Mrs. Foster taught a three months' term of school,—and this is the history of the first and second schools in the old town of Bon Homme."

The testimony of others resident in Bon Homme during these years goes to corroborate the facts as recited by Mrs. Williams. Mr. Robinson, in a letter to the writer, says:

"I think it can be accepted as true that the first building erected for school purposes was built at Bon Homme in the spring of 1860."

The school house built at Vermillion in 1864 has the distinction of having been used continuously for school purposes from the time of its erection until late in Territorial days, 1873, when a large brick building was erected by the people of Vermillion to take the place of their first school house.

* This, then, was the second school house built in Bon Homme.

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